

Summary documenting Panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

#### SEDAR 23 Review Schedule:

#### November 15–17, 2010; SEDAR 23 Review Workshop

November 15, 2010: 10 a.m. - 8 p.m.,  
November 16–17, 2010, 8 a.m. - 8 p.m.

The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from, or completed prior to the time established by this notice.

The Review Workshop is an independent peer review of the assessment developed during the Data and Assessment Workshops. Workshop Panelists will review the assessment and document their comments and recommendations in a Consensus Summary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

#### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **FOR FURTHER INFORMATION CONTACT**) at least 5 business days prior to each workshop.

Dated: September 30, 2010.

**Tracey L. Thompson,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. 2010-25057 Filed 10-5-10; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[Order No. 1708]

#### Reorganization of Foreign-Trade Zone 113 Under Alternative Site Framework; Ellis County, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas*, the Board adopted the alternative site framework (ASF) in December 2008 (74 FR 1170, 01/12/09; correction 74 FR 3987, 01/22/09) as an option for the establishment or reorganization of general-purpose zones;

*Whereas*, the Ellis County Trade Zone Corporation, grantee of Foreign-Trade Zone 113, submitted an application to the Board (FTZ Docket 4-2010, filed 01/14/10) for authority to reorganize under the ASF with a service area of Ellis County, Texas, adjacent to the Dallas/Fort Worth Customs and Border Protection port of entry, and FTZ 113's existing Site 1 would be categorized as a magnet site;

*Whereas*, notice inviting public comment was given in the **Federal Register** (75 FR 3705, 01/22/10; 75 FR 17125, 04/05/10) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

*Whereas*, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

*Now, therefore*, the Board hereby orders:

The application to reorganize FTZ 113 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, and to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project.

Signed at Washington, DC, September 24, 2010.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

*Attest:*

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2010-25222 Filed 10-5-10; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

[Docket No. 100920454-0473-02]

#### Request for Public Comments Regarding Small and Medium Enterprises' Understanding of and Compliance With the Export Administration Regulations

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Notice of Inquiry.

**SUMMARY:** The Bureau of Industry and Security (BIS) is publishing a notice of inquiry to solicit comments from the public regarding small and medium enterprises' (SMEs) understanding of and compliance with export controls maintained pursuant to the Export Administration Regulations (EAR). BIS anticipates that input from the public will help it administer and enforce export controls in a manner consistent with U.S. national security while facilitating and even increasing legitimate trade involving SMEs and the exporting community in general.

**DATES:** Comments must be received by December 6, 2010.

**ADDRESSES:** You may submit comments on this notice of inquiry, identified by "Notice of Inquiry—SME", by any of the following methods:

*E-mail:* [publiccomments@bis.doc.gov](mailto:publiccomments@bis.doc.gov). Include "Notice of Inquiry—SME" in the subject line of the message.

*Fax:* (202) 482-3355. Please alert the Regulatory Policy Division, by calling (202) 482-2440, if you are faxing comments.

*Mail or Hand Delivery/Courier:* Sheila Quarterman, U.S. Department of Commerce, Bureau of Industry and Security, Office of Exporter Services, Regulatory Policy Division, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, *Attn:* "Notice of Inquiry—SME".

**FOR FURTHER INFORMATION CONTACT:** Sheila Quarterman, U.S. Department of Commerce, Bureau of Industry and Security, Office of Exporter Services,

Regulatory Policy Division, Telephone 202/482-2440, E-mail [squarter@bis.doc.gov](mailto:squarter@bis.doc.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

President Obama's August 2009 call for broad-based review and modernization of U.S. export controls presented the Bureau of Industry and Security (BIS) a strategic opportunity to reach out to regulated groups such as small and medium enterprises (SMEs) regarding their experience with the Export Administration Regulations (EAR). More recently, the President's National Export Initiative (NEI) announced in January 2010 focuses on expanding trade advocacy and opportunities, particularly for SMEs. Pursuant to the NEI, the Commerce Department's International Trade Administration will seek to increase the number of SMEs exporting over the next five years. BIS continues to develop the agency's commitment to addressing SMEs' concerns through its outreach efforts. At its October 2009 annual Update Conference on Export Controls, BIS led a roundtable discussion on SMEs' export compliance concerns.

In this notice of inquiry (NOI), BIS is soliciting information regarding SMEs' understanding of and compliance with the EAR. BIS intends to use the information to evaluate the need for innovations and revisions that will enhance SMEs' understanding of and compliance with the EAR. Given SMEs' strategic position in export trade, the EAR must continue to address SMEs' concerns in a manner that promotes compliance without adversely affecting competitiveness. Ultimately, the agency seeks to administer and enforce export controls in a manner that protects U.S. national security while facilitating and even increasing legitimate trade involving SMEs and the exporting community in general.

It is important to BIS to identify and address issues that impact a range of SMEs' understanding of and compliance with the EAR. BIS intends that this NOI will yield useful input not only from and about enterprises with extensive experience in export trade but also from and about enterprises less familiar and less experienced in export trade.

Unlike for small businesses or enterprises, there is no widely accepted or agreed upon definition of medium enterprises. However, industry and government entities have made progress in incorporating the consideration of medium enterprises in matters of global trade.

In formulating an appropriate definition of SMEs for purposes of this

NOI, BIS reviewed relevant data from U.S. Government, industry, and international sources, including the U.S. International Trade Commission (USITC), the U.S. Small Business Administration (SBA), the U.S. Department of Agriculture, the U.S. Department of Commerce's Bureau of the Census, and the European Commission. In particular, a recent USITC report, *Small and Medium-Sized Enterprises: Overview of Participation in U.S. Exports* (USITC Publication 4125, January 2010), and the SBA Office of Advocacy's analysis on which it draws offer helpful guidance in defining SMEs. Based on the USITC report, the related analysis from the SBA's Office of Advocacy, and the SBA's definition of "business concern" (13 CFR 121.105), BIS defines SMEs for purposes of this NOI as enterprises with fewer than 500 employees, organized for profit, and independently operated and established within the United States. Given the range of sectors that participate in dual-use exports, BIS does not believe that a revenue threshold is appropriate. BIS welcomes comments regarding this definition.

Comments that identify issues and make recommendations regarding SMEs' awareness and understanding of the EAR, as well as their experiences complying with the EAR, will be instructive. BIS invites the public also to submit comments on the following:

- (1) The principal challenges SMEs face in trying to comply with the EAR, including any challenges that SMEs uniquely face and approaches to overcoming these challenges;
- (2) The value of current BIS outreach, education and counseling to SMEs in understanding and complying with the EAR;
- (3) Ways to improve or expand SMEs' awareness, knowledge and understanding of the EAR and increase their capacity to comply with them; and
- (4) Data, including comparative international data, that support comments and recommendations related to items (1) through (3) above; and that provide examples of effective methods of administering and enforcing export controls with special attention to SMEs.

Comments should be submitted to BIS as described in the **ADDRESSES** section of this notice by December 6, 2010. BIS will consider all comments submitted in response to this NOI that are received before the close of the comment period. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. BIS will not accept public comments accompanied by a request that a part or all of the material be

treated confidentially because of its business proprietary nature or for any other reason. BIS will return such comments and materials to the persons submitting the comments and will not consider them. All public comments in response to this NOI must be in writing (including fax or email) and will be a matter of public record, and will be available for public inspection and copying on the BIS Freedom of Information Act (FOIA) Reading Room Web site at <http://bis.doc.gov/foia/default.htm>.

Dated: September 27, 2010.

**Kevin J. Wolf,**

*Assistant Secretary for Export Administration.*

[FR Doc. 2010-25152 Filed 10-5-10; 8:45 am]

**BILLING CODE 3510-33-P**

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## COMMODITY FUTURES TRADING COMMISSION

**Agency Information Collection Activities: Proposed Collection; Comment Request: Proposed Collection; Comment Request: Rules Pertaining to Contract Markets and Their Members**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the CFTC is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Rules Pertaining to Contract Markets and Their Members; [OMB Control Number 3038-0022]. Before submitting the ICR to OMB for review and approval, the CFTC is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before December 6, 2010.

**ADDRESSES:** Comments may be mailed to David Van Wagner, Commodity Futures Trading Commission, Division of Market Oversight, 202-418-5481, fax 202-418-5507, e-mail [dvanwagner@cftc.gov](mailto:dvanwagner@cftc.gov). Refer to OMB Control No. 3038-0022.

**FOR FURTHER INFORMATION CONTACT:** David Van Wagner at 202-418-5481, fax 202-418-5507, e-mail [dvanwagner@cftc.gov](mailto:dvanwagner@cftc.gov).

#### SUPPLEMENTARY INFORMATION:

*Affected Entities:* Entities potentially affected by this action are registered entities (designated contract markets, registered derivatives transaction

## RECORD OF PUBLIC COMMENTS

### NOTICE OF INQUIRY: REQUEST FOR PUBLIC COMMENTS REGARDING SMALL AND MEDIUM ENTERPRISES' UNDERSTANDING OF AND COMPLIANCE WITH THE EXPORT ADMINISTRATION REGULATIONS

Published in the Federal Register: October 6, 2010 (75 FR 61706)  
Comments due December 6, 2010

	SOURCE	SIGNER(S) OF COMMENT	DATE	NUMBER OF PAGES
1.	Lion Precision	Don Martin	October 12, 2010	3
2.	Acroprint Time Recorder	Linda Bonin	October 19, 2010	1
3.	Lake Shore Cryotronics, Inc.	Betsey Krause	November 12, 2010	4
4.	R.O.V. Technologies, Inc.	Jill Zachary	November 16, 2010	3
5.	Bud Cohan	Bud Cohan	December 1, 2010	1
6.	Patriot Consultancy LLC	Rick Field	December 1, 2010	5
7.	Silicon Designs, Inc.	John Cole	December 2, 2010	2
8.	Aeronics	Venkat Raman	December 2, 2010	1
9.	Aptima, Inc.	Margaret J. Clancy	December 3, 2010	4
10.	Rohrback Cosasco Systems, Inc.	Brent Ford	December 3, 2010	2
11.	National Small Business Association	Todd McCracken	December 7, 2010	4
12.	National Association of Manufacturers	Frank Vargo	December 7, 2010	7

**From:** Don Martin <don@LionPrecision.com>  
**To:** PublicComments@bis.doc.gov  
**Date:** Tue, Oct 12, 2010 10:38 AM  
**Subject:** Notice of Inquiry - SME

Hello,

I was alerted to the request for comments in regard to Export Administration Regulations.

Lion Precision manufactures sensors for measuring displacement. Much of our equipment falls under ECCN2b006.b.1.a  
2B006.b.1.a. Non-contact type measuring systems with a ``resolution'' equal to or less (better) than 0.2 [ $\mu$ m] within a measuring range up to 0.2 mm;

We are a company of 30 people.

We have had extensive training for about one-fourth of the people in our company (all sales people, all shipping people, and an export administrator) so that we can be in compliance with the rules imposed under the EAR.

We design, build and sell sensors for mechanical measurements of position, vibration, and spindle error measurement.

Our sensors are used by manufacturers. As you might be aware, there is a lot of manufacturing that goes on in countries that require an export license. This severely limits our competitive position relative to companies from other parts of the world in the following ways:

1. Those countries that have signed the Wassenaar agreement have slightly (more liberal) interpretation of the rules
2. Those countries that have signed the Wassenaar agreement provide faster approval of export licenses
3. Those countries that have not agreed to the Wassenaar arrangement can deliver product anywhere in the world without delay. The sale price for a single sensor is between \$1,000 and \$3,000, so you can imagine, as a per cent of the total cost, it is very expensive and time consuming when we have to apply for and get approval to sell sensors to each individual end user.

Our experience with the BIS and the EAR is as follows:

1. Ignorance: Our equipment gradually got better, so that at some point (15 years ago) and a federal BXA enforcement agent showed up at our door, looked at our records and fined us a fair amount of money.
2. The infraction that took place many, many years ago still shows up in Google Searches of our company, continually damaging our reputation and making us less competitive than our foreign competitors. We look like criminals or like we don't know what we are doing.
3. We had the experience of applying for an export license, having it take 50 weeks for a decision, and then having the application rejected, EVEN THOUGH the potential customer already had competitive equipment of similar

capability.

4. We had the experience of selling to a company for several years in China, and then having the BIS tell us to stop.

5. We had the experience of having our export license for a company in China rejected without an explanation, then when we reapplied a year later, we were asked if "anything had changed" in regard to the company. We stated that we did not know, and they could still not tell us why the original application was rejected, and because we could not provide any new information, our second application was rejected.

6. We now subscribe to an on-line service to scan each and every order we process for denied persons and denied organizations. We now require everyone that enters our facility to sign in and we are forced to look down our noses at our largest potential customers (visitors from outside the U.S.) because of the "extra security" that we gain by asking for extra information. We are limited on the engineers we hire because if they are not U.S. citizens or green card holders, we are required to get an export license in order for them to work for us.

Because of the large potential in the growing economies of the world, we have been trying to develop a strategy to sell our products. Our most recent strategy has been to "downgrade" our products to operate in a performance range that does not require an export license. This has taken significant engineering resources that could have been used to advance the state-of-the-art, but instead were diverted to make our products perform "poorly enough" to be sold into the largest markets in the world. So now we are forced compete in the world market trying to sell a worse performing product (even though the manufacturing cost is the same). There is definitely something wrong with this picture.

Any one of these considerations is not insurmountable. In fact, we are able to comply (to the best of our knowledge) with all of the requirements. But it is sucking resources that could be deployed in more productive activities. We are a company of 30 people. We design, build, sell, ship, collect bills, pay vendors, maintain an ISO9000 quality system, and provide world-class products.

Every bit of effort that is consumed in nonproductive activities lowers our competitiveness in the world market. With only 30 people, there is not a lot of "extra" overhead. There can't be - or we would be forced out of business.

The encroachment of ineffective government regulations in the area of export controls is not helping us compete in any way, and in many ways it is reducing our competitiveness in the world market. I plead for some relief.

Any relief you can provide in regard to eliminating these archaic and ineffective rules would be appreciated.

Any relief you can provide to streamline the application approval process would be appreciated.

Any relief you can provide to get our name off of the Google Search list would also be appreciated (see list below).

1. [PDF]

DON'T LET THIS HAPPEN TO

YOU!!!<<http://www.bis.doc.gov/enforcement/dontletthishappen2u.pdf>>

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as Lion Precision, of Shoreview, Minnesota. The penalty settles allegations that the company . . . . Ibanez agreed to the civil penalty after BIS alleged

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2. [PDF]

Appendix D: <[a href="http://www.bis.doc.gov/Enforcement/Default](http://www.bis.doc.gov/Enforcement/Default)

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BIS alleged that on seven occasions, Lion Precision exported these measuring probes without the required export licenses. A portion of the penalty, \$42500,

...

[www.bis.doc.gov/news/2003/annualreport/appendixd\\_p.pdf](http://www.bis.doc.gov/news/2003/annualreport/appendixd_p.pdf)

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1. [DOC]

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The \$182000 was the maximum civil penalty for the charges that BIS had proposed . . . . LION PRECISION. On December 20, 2001, the Commerce Department imposed a . . .

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2. U. S. Bureau of Industry and Security - Commerce Department

...<<http://www.bis.doc.gov/news/archive2001/minnfirmfined.htm>>

Dec 20, 2001 ... BIS Public Affairs (202) 482-2721. Commerce Department

Imposes Civil Penalty ... Automated Quality Technology, also know as Lion Precision, ...

[www.bis.doc.gov](http://www.bis.doc.gov) >

News<<http://www.google.com/url?url=http://www.bis.doc.gov/news/index.htm&rct=j&sa=X&ei=dcevTOv6EpfhnQepqv2iBA&ved=0CAkQ6QUoAA&q=/search%3Fhl%3Den%26q%3D%2Bsite:www.bis.doc.gov%2Blion%2Bprecision%2Bbis&usg=AFQjCNFU-NwxEh6afJlDLEvkS4bT21GfpQ>> >

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3. [PDF]

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2002<http://www.bis.doc.gov/news/2003/annualreport/printableversion.pdf>

File Format: PDF/Adobe Acrobat

Lion Precision. On December 20, 2002, BIS imposed a \$52500 civil penalty on Automated Quality Technologies, Inc., doing business as Lion Precision, ...  
www.bis.doc.gov/news/2003/annualreport/printableversion.pdf

Best Regards,

Don Martin

President

Lion Precision

don@lionprecision.com

(office) +651-484-6544

www.lionprecision.com

CC: carol@LionPrecision.com

**From:** "Linda Bonin" <lbonin@acroprint.com>  
**To:** PublicComments@bis.doc.gov  
**Date:** Tue, Oct 19, 2010 3:29 PM  
**Subject:** Notice of Inquiry - SME

Acroprint Time Recorder understands and complies with the export controls maintained pursuant to the EAR. We have a Company Export Management Procedure in place and receive notification of changes through the BIS website.

We also actively check the EAR and the BIS websites for updates, changes and clarifications on a regular basis.

Best regards

Linda Bonin

919-872-5800 X 155



**From:** "Betsey Krause" <betsey.krause@lakeshore.com>  
**To:** PublicComments@bis.doc.gov  
**Date:** Fri, Nov 12, 2010 12:58 PM  
**Subject:** Comments - Notice of Inquiry- SME 75 FR 61706

Please see attached letter.

=====

Betsey Krause  
Corporate Compliance Manager  
Lake Shore Cryotronics, Inc.  
575 McCorkle Blvd.  
Westerville, OH 43082

(614) 891-2243 x 140

betsey.krause@lakeshore.com

<http://www.lakeshore.com>

=====

November 8, 2010

Sheila Quarterman,  
U.S. Department of Commerce, Bureau of Industry and Security,  
Office of Exporter Services, Regulatory Policy Division,  
14th Street & Pennsylvania Avenue, NW., Room 2705,  
Washington, DC 20230

This letter is in response to “Notice of Inquiry—SME”, 75 FR 61706

Lake Shore Cryotronics, Inc. is a small privately held corporation in a suburb of Columbus, Ohio. We have been an international leader in the development of innovative measurement and control technologies since 1968. Our customer base is primarily scientific and technical.

Over the past year we have grown our workforce by 10% through product innovation and expansion in international markets. We expect similar growth in 2011. The company has been honored by Ohio with the State Excellence in Exporting Award for successfully meeting the challenges of developing overseas markets. We have built an international distributor and representative network which extends throughout North and South America, the United Kingdom, Europe, India, Japan, China, Taiwan, and Korea.

As Compliance Manager, export is one of many hats that I wear at Lake Shore. I also am responsible for other regulatory oversight including OSHA and EPA compliance as well as sustainability and recycling program development and contract review. I mention all of these because wearing many hats is typical in small business and makes compliance that much more challenging.

Specifically, I would like to respond to: **SME Awareness and Understanding of the EAR**

Awareness and Understanding are two markedly different issues.

#### *Awareness*

So often small business finds out about regulations affecting them after being caught in non-compliance. When one's primary focus is manufacturing a product and getting it out the door, personnel does not go searching out regulatory issues that may apply. This is not because they are trying to “get away” with something, it's because these regulations and agencies are totally off of their radar.

Small companies do not have legal departments that scan for new regulations, even though it is their desire to comply. (In fact, it will be interesting to see how many actually see the



Federal Register notice requesting this feedback.) And most of our contacts are not Federal. For the most part, if we even have contact with regulators, it is at the local or state level.

If the Department truly wants to reach small business I would recommend more aggressive outreach:

- Publicity in trade and general publications and other mediums that export regulation exists and affects all business.
- Educating Local Chambers of Commerce, who are always looking for things to put in newsletters.
- Guiding the local Commercial Service offices toward sponsoring workshops.
- Working with ICE "Outreach" to educate high risk businesses that these regulations apply to them (A Federal Agent showing up at one's door is very effective.)

One of the most effective workshops I attended was sponsored by the Southern Indiana Counter Proliferation Task Force. Never would I have expected that so much nefarious activity could be taking place in southern Indiana. It really brought home the importance of small business as key to homeland security. Although there will always be people and business who choose to do harm, for the most part we want to assist in maintaining security.

#### *Understanding the EAR*

To stay up to date with the material, I follow the website and attend a workshop annually. From Ohio, I have traveled to Indianapolis, Washington D.C., Miami and most recently Birmingham.

As with any training, the value of the experience rests in the presenters and presentation. Of the three BIS run events I have attended, one was EXCELLENT, one was Good and one was poor. There should be more consistency between presenting groups explaining tools available for compliance. For example, one training group did not even know of the existence of the NTIS database that we use for searching the prohibited parties lists. Some groups made themselves available after hours and others disappeared.

Specific recommendations:

1. Offer no/ low cost short topic webinars in addition to in- person workshops, like Census does with AES.
2. Offer RSS feeds on changes to the CCL and the regulations.
3. Use your website to market information and training, not just disseminate it. A great example is the new Commodity Classification page. It is written like a regulation and not marketed as the useful tool that it could be.

*LakeShore*

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All in all, I have found the people of BIS sincere in their desire to answer questions and help small business. The regulations are complicated and their reach deep which is difficult and expensive for small and medium businesses who do not have their own legal staff.

Most small business wants to do the right thing. This can be difficult to achieve, when one does not even know what regulations apply or what the right thing even is. I expect that if this information were more visible, more would comply.

Please contact me if you have any questions at (614) 212-1537 or [Betsey.krause@lakeshore.com](mailto:Betsey.krause@lakeshore.com).

Thank you for the opportunity to submit this response.

Betsey Krause

Corporate Compliance Manager  
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*LakeShore*

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**From:** "R.O.V. Technologies, Inc." <mail@rovtech.com>  
**To:** PublicComments@bis.doc.gov  
**Date:** Tue, Nov 16, 2010 7:27 AM  
**Subject:** Notice of Inquiry - SME

R.O.V. Technologies, Inc. is a small, privately held company in southern Vermont. We manufacture remotely operated, radiation tolerant, underwater camera and inspection systems for the nuclear power industry. Our market is primarily in the United States. We have sold a small amount of product in Canada. We have 45 full time employees.

We were (almost accidentally), introduced to the EAR by our representative from the Vermont Global Trade Partnership during a conversation about our business in general. We discussed our plans for potentially expanding internationally; and at that time, were informed that due to the nature of where and by whom our products will be used, we might be subject to export license requirements under the EAR.

As a result, we have attended EAR seminars hosted by a local export and import compliance training company, and hired a consultant who identified our ECCN numbers for our products. Our consultant also helped us develop and implement a comprehensive Export Management System to ensure that we stay in compliance with the EAR.

We have yet to ship internationally; however, we are diligently screening all requests from international companies and persons per our Export Management System and are working toward carefully building international relationships.

From our limited experience so far, we would recommend two potential areas for improvement. We believe the main obstacle to small and medium enterprises understanding and complying with the EAR is simply having the awareness that the EAR exists. We would recommend that promotion and education as key areas for BIS focus on. Perhaps working closely with the individual states' business and trade organizations (at both the state and local level) to create this awareness for the business communities would be a helpful approach.

Secondarily, we found it difficult to navigate the nuances of the Commerce Control List to determine our ECCN numbers with confidence. We incurred an unexpected expense in hiring our consultant; but felt that was the only way to ensure correct classification of our products. We are unsure if BIS counselors offer this level of service, but it may be very helpful, particularly to small businesses with limited resources,

such as R.O.V.

We have found the BIS website to be very comprehensive and easy to navigate, SNAP-R makes filing license applications relatively easy, and STELA is very helpful. We have found these tools to be user-friendly. It is good to see that the lists and charts are updated regularly.

We have been in contact with BIS employees as questions have risen from some of our license applications, and have found them to be very helpful, patient, and understanding.

Should you have any questions or require additional information do not hesitate to contact either Jill Zachary or Jack Judge at Area Code 802 Telephone 254-9353.

Thank you.

Very Truly Yours,

Jill Zachary

R.O.V. Technologies, Inc.

CORPORATE OFFICES: 49 Bennett Drive, Brattleboro, VT 05301

SATELLITE MANUFACTURING OFFICE: 616 Franklin Road, Vernon, VT 05354

Telephone: 802-254-9353, Fax: 802-254-9354

24-hr Technical Support: 815-979-0712, 802-451-6232, 802-380-0343 or 802-579-8150

E-Mail: mail@rovtech.com \* www.rovtech.com

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**From:** "Bud Cohan" <budcoh@columbus.rr.com>  
**To:** PublicComments@bis.doc.gov  
**Date:** Wed, Dec 1, 2010 8:49 AM  
**Subject:** Notice of Inquiry\_SME

A brief word of introduction: I am an instructor at Columbus (Ohio) State Community College and teach several elective courses available in the Department's Supply Chain Management Program that deal with import/export regulatory compliance. I rely heavily on the BIS webinars and other materials at the BIS training site. These materials, while helpful, could (should) be better organized and formatted to facilitate their presentation (inclusion) in community college programs.

Although the BIS has a good program of seminars, it limits presentations to a comparatively small number of cities; I suggest it would be helpful to not only allow community colleges to pick up the slack but to provide them with targeted assistance.

Improvements I'd like to see include (in no particular order of precedence)

- a.. Develop a standard curriculum with topics arranged in logical sequence and organized to fit a typical 15-week semester.
- b.. Unlock Power Point presentations to allow local instructors to use the PPT's "handout" print function, e.g., three up with lines for student notes.
- c.. Ensure that curriculum topics are related to BIS publications so that these publications can be used as student texts.
- d.. Make BIS publications available via the internet so that students may download them at no cost; I note that one such BIS publication (formerly available at no cost) is now available only for sale. I understand charging for hard copy publications but why ones that are downloaded?
- e.. Set up a program to automatically inform community college instructors of changes to material so that they might revise their lesson plans when they become out dated due to changing regulations or practices.
- f.. Provide instructors with end-of-chapter(topic) questions (and answers), practical exercises (with solutions), case studies, final exams, etc., similar to materials now used in BIS seminars.

I realize there's tendency for you to think, "This guy wants the BIS to do his work." Flip side of the coin, I'm currently doing your work -- what's wrong with asking for professional, knowledgeable help?

Bud Cohan, adjunct instructor, CSCC, (614) 476-5545. 251 Shara Park Place, Gahanna, OH 43230-2766



**From:** "Rick Field" <rfield37@comcast.net>  
**To:** PublicComments@bis.doc.gov  
**Date:** Wed, Dec 1, 2010 5:22 PM  
**Subject:** ''Notice of Inquiry-SME''

Attn BIS:

REF: Request for Public Comments Regarding Small and Medium Enterprises'  
Understanding of and Compliance With the Export

Administration Regulations

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of Inquiry.

The questions below are from issues somewhat common to the world of US contractors (including SME sub contractors) performing US government work in overseas locations. The EARs are written with a slant towards US exporters of goods they manufacture or assemble in the US or re-export from somewhere else - there is an entirely different world out there of US companies exporting technical, consulting, training, and engineering services that don't have the benefit of having the EARs very specific to their applications. I have attended several BIS seminars and there is never mention of the special needs of the US-based service providers. Calls to BIS experts in your field offices seldom result in a quick or easy answers just because service providers are not clearly mentioned or considered in the EARs. Working in embargoed countries adds another level of complexity and not all US governing regulations are clear. I and other SMEs working in similar capacities are only looking for some clarity beyond what we might receive from a DC-based law firms specializing in providing expensive interpretations of the EARs.

We have suggested several times that BIS should create a small addendum or brochure specifically addressing BIS-related issues as they apply to US service providers working outside of the US and utilizing equipment (that may be controlled) and technology from the US to fulfill; the terms of their contracts with USG entities.

I had written BIS before for some direction. Each of my specific questions could and probably should be submitted through your system as Advisory Opinion Requests. But before considering this traditional route which is never quick might I request that some statement of clarification (or definition) from you as to how does BIS (and the EARs) differentiate between and true NGO doing primarily humanitarian work and a quasi-NGO doing development work as consultants to USAID-funded infrastructure development

programs in countries like Sudan?

I believe it would be extremely helpful for provide this clarification in a widely published manner (such as the BIS Website under Advisory Opinions) clarifying its definition of an NGO and defining the status of a US company working as a prime or subcontractor delivering only services (business consulting, project management, engineering, construction, technical support, training, etc.) under a US government-funded (such as USAID) contract in an embargoed country like Sudan. The only products or technologies that are exported/imported are those required and procured from multiple sources to complete the development, training, and/or technical support project outlined in their contract with a US government entity.

As you know, the EARs are not 100% clear in this definition - they, as they are written, are heavily slanted towards US manufacturers as are your general BIS seminars who export or distributors or sales agencies who export US-origin products or technologies commercially for sales or re-sale overseas. There is very little language that specifically applies to US companies exporting "services" other than references to "NGOs". I personally have worked for several large prime contractors delivering services overseas and each one interprets the EAR use of the word NGO in slightly different ways as it applies to their business. In 740.7 (B)(2) ".to support the actions in Sudan for humanitarian or development purposes by an organization authorized by OFAC to take such actions" the word development is used - is a "commercial" company contracted by USAID to build infrastructure to be considered eligible under these provisions to use the TMP exemption? Part (a)(2)(i)(A),(B)((1)(2)(3) of 740.7 appears to cover this as building or re-building local infrastructure certainly is "development"

work.

After some discussions with BIS analysts and other compliance professionals it appears there is an acceptable route (recognizing the intent of the TMP exemption) to proceed with and still gain access to and benefits of the TMP exemption for "services" companies planning to set up in-country support operations to service long term US government contracts. Ideally, they should avoid use of the TMP exemption for anything other than movement of work tools for true temporary US staff in and out of the country and file for regular BIS licenses for any and all "controlled" US-origin equipment, software, or technologies that will be used in-country to support the project and its requirements. The TMP exemption does not appear to cover US-origin equipment and software required to run the project for its full term. It is also important to develop a strategy to deal with the BIS license terms and renewal requirements for longer (than 2 years) contracts.

Furthermore, and in an effort to adhere to the restrictions noted in 740.9,

if local staff is to be hired and given access to this equipment and software then this must be clearly noted on the BIS license applications and supervision and control of this equipment clearly spelled out and periodically audited. I believe this is referenced in (a) (3) (iv) (A) (1) (2) (3). Obviously complete inventory records (part 762 of the EARS) must be kept and proper disposition of said equipment and software must be made at the end of the contract.

I have several specific questions that I can either present now as part of this submittal or file an Advisory Request for an Opinion on the following cross section of questions that I have listed below:

1 - What is the differentiation in the eyes of the EARS and the Dept of Commerce between NGOs and "other" non-governmental organizations or companies who are commercial in nature (as opposed to being "not-for-profit"

or strictly doing "humanitarian" work) are doing contract work for a branch of the US government in an embargoed country? The EARS do mention this in several places in part 740.7 - (a) (2) (i) (b) (2) Permissible Users of this Provision

2 - Were such companies eligible to use of TMP exemption in embargoed countries like Sudan before Feb. 28, 2008 when the Expanded Authorization for Temporary Exports and Re-exports of Tools of the Trade to Sudan was issued? Part 740.9 of the EARS only mentions NGOs - what about US contractors doing "development" work in Sudan?

3 - Are locally hired (non US citizens) personnel who have been placed on the payrolls of US contractors and screened through the ELPS system working in an embargoed country like Sudan eligible to use "controlled" export items (like MS Word or Excel) on a computer in a US contractor-leased office that has an EAR99 classification on the computer but a 5D992 classification on the software? Part (a) (3) (iv) (A) (2) of 740.9 appears to indicate that with proper screening and controls a non US citizen in a country like Sudan could be permitted access to Tools of the Trade if noted on the license - am I correct?

4 - What is the best way to deal with the ambiguities of Part 740.9 when deciding on how best to deal with a 2 year BIS license that is expiring in 30 days but the contract the US company is working under runs for 18 more months - file a completely new license with reference to the former license?

Recent phone calls to BIS result in several interpretations. The EARS even state that a TMP can only have a term of one year and then can only be

extended for up to six months. How do I handle equipment that was brought in under the TMP and then a later decision was made to keep it in country until the end of the project? Do I file for a new license?

5 - What is the proper disposition of BIS licensed commodities (either brought in under a TMP exemption and later licensed or under a regular BIS license) at the end of a USAID-funded contract that clearly states that these commodities are to revert to USAID ownership? In reviewing Part 740.9, I believe this section (4)(iii) is interpreted to mean this disposition method must be clearly noted on the original license application so BIS can review and respond and if the response is "yes" then this is ultimately reflected in the resulting BIS license "conditions"? Must these commodities brought in under the TMP exemption be re-exported prior to giving them to USAID or can we do a direct physical transfer? As you probably know, USAID frequently turns over equipment and software purchased and utilized in one of its contracts to a new US contractor coming in to perform another contract in the same country. How best to handle this process so that it complies with the EARs and yet does not cause an unreasonable hardship or cost?

6 - How do I best handle the case that I must to renew a 2-year BIS license because my client's contract with the US government extends beyond the license term? Originally this license was for 20 computers that when originally licensed had an APP level that required ECCN classification at 4A994 but here now here 2 years later these same APP levels now only require a classification of EAR99 which means they no longer need a license? Does the original license become invalid or no longer valid if classification of the licensed commodities changes to EAR99s?

7 - How is "temporarily assigned abroad" as mentioned in Part 750.9,

(2)(i)(A) meant to be defined? Does it mean TDY status of a week to 90 days for example could it include a 2-year "temporary" assignment?

Again I would like to repeat my earlier suggestion that your offices should seriously consider creating an FAQ database or an information pamphlet, etc. just for US contractors providing "services" to US government-funded contracts that contained questions like I have mentioned above and the appropriate answers that would help guide them down this path? As you know, a robust FAQ listing reduces confusion, phone calls, and user frustrations.

I hope this input was useful. My company is a WOSB working as a procurement services agency.

Rick Field  
PATRIOTConsultancy LLC  
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CC: tandrukonis@bis.doc.gov; "'squarter@bis.doc.gov.'" "

**From:** "John Cole" <jcole@silicondesigns.com>  
**To:** PublicComments@bis.doc.gov; jcole@silicondesigns.com  
**Date:** Thu, Dec 2, 2010 7:52 AM  
**Subject:** Notice of Inquiry-SME

Comments on Recent Revision of EAR 7A001 and 7A101 -  
Accelerometers

I want to commend BIS for rewriting these two sections into clear requirements.

The ambiguous wording of the previous version of these sections limited export of accelerometers "with continuous output capable of operating at accelerations over 100g" or similar wording. "Continuous output" is ambiguous, since all accelerometers have continuous output. What was really meant? The ITAR had a similar requirement. The revised wording of the EAR shows that these sections were not intended to control export of units used for measuring shock.

The following is provided to demonstrate to you the effect of the previous wording on us, a small, high-tech business.

About 6 years ago we completed development of a new high-g (above 100 g) accelerometer, under an SBIR contract with the US Air Force (Eglin), for measuring shocks in bomb fuzes. It also has commercial applications in shock testing. Because of the previous wording of the EAR and ITAR, the Air Force would not release us from contract terms that imposed export restrictions. We had the product ready to go six years ago, but with the export controls (at both Commerce and State) and a product also developed under a contract for a military application, we were concerned that even offering them to US buyers would make us subject to the ITAR regulations, requiring us then to register with State as a manufacturer and pay their annual ITAR fee. And with these restrictions, we surely could not discuss these products (and expose defense technical data) with a UK company, who was subcontractor to a US company developing a fuze for the US Air Force; because of these export restrictions, we passed out on this opportunity to work with this company and explore using these accelerometers in the application for which they were developed.

Keeping the technology alive, we instead sold small quantities of engineering units to the Army, which they used for projectile research.

After several trips for our other accelerometers to French customers (who I found also needed our high-g accelerometers), about 3 years ago and with help from Diane Mooney at the Seattle Export Assistance Center, I tracked down and talked to the individual at BIS who was most

familiar with these two EAR sections. Unfortunately, he did not know or remember what these sections were intended to protect, and I was left without any additional guidance on the regulation as written.

Among my other duties as company president, I am the export control department for the company. This unsuccessful attempt, the raid on Endevco, a competitor, which shut down their business for a few days, and the \$10M fine to Boeing for exporting a \$200 GyroChip in a component of a 747, confirmed my decision NOT to introduce ANY products using this accelerometer, to be on the safe side. Without understanding the reason for the ambiguous wording of the EAR, we could take no chance that I could guess correctly what was meant. We could not survive an Endevco or Boeing-type mistake; we would be out of business.

I commend you for this clarification. Now that the wording is clear, we can now do what the SBIR program intended - innovate, manufacture and sell new products, albeit late. Starting development after ours was completed, a large competitor recently introduced a competing product. We missed out on this opportunity.

To offer a suggestion, it would be desirable if BIS had a office (or at least a focal point with return calls from a knowledgeable persons) to provide verbal, interactive, non-binding clarification as to the INTENT of the EAR, so that small businesses could get a quick answer to an EAR question. In accepting such calls, such an office would identify issues raised on the wording of the regulations, issues that would guide writing future revisions of the EAR to correct ambiguous and overly general wording.

Thank you for accepting comments. You are welcome to contact me if I can be of any additional help.

Regards,

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CC: kati.cole@silicondesigns.com; trade@commerce.wa.gov;  
Diane.Mooney@trade.gov



**From:** "Venkat Raman" <venkat@aeronics.in>  
**To:** PublicComments@bis.doc.gov  
**Date:** Thu, Dec 2, 2010 12:50 AM  
**Subject:** EAR / ITAR - Indian SME

Hello,

We are a small company providing electromechanical products to the commercial aviation industry. We wish to provide the same to defense contractors who have offset obligations due to their sales to Indian defense. These contractors ask about our ability to ensure adhering to the ITAR and EAR requirements. I wish to make the following points:

1. It is extremely difficult for an SME to figure this out. A formal training and what to do will help a lot.
2. I am also a member of Indo American Chamber of Commerce. A forum such as this may be useful to disseminate the information.
3. I understand that compliance can be got by individuals working in India in coordination with OEMs by applying for clearance but the exact program detail must be revealed. We are working on simple components like wire harnesses and cable assemblies. It will be a lot easier if the requirements for such non-critical products are exempt.

Regards,

Venkat

**From:** Margaret Clancy <clancy@aptima.com>  
**To:** PublicComments@bis.doc.gov  
**Date:** Fri, Dec 3, 2010 8:04 AM  
**Subject:** Notice of Inquiry - SME BIS

\*Subject: \* Request for Public Comments Regarding Small and Medium Enterprises' Understanding of and Compliance with the Export Administration Regulations  
\*Reference: \* Federal Register / Vol. 75, No. 193 / Wednesday, October 6, 2010 / Notices, Docket No. 100920454--0473--02

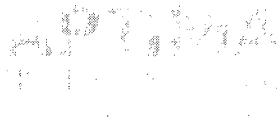
\*Dear Ms. Quarterman\*,

Aptima, Inc. appreciates the opportunity your office extended to industry to provide comments regarding the challenges small and medium size businesses face complying with Export Administration Regulations. Please accept the attached letter as our response to said inquiry.

\*Sincerely,\*

/Margaret J. Clancy  
/  
Executive Vice President & Co-founder  
Aptima, Inc.  
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\*\*\*\*\*

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U.S. Department of Commerce  
Bureau of Industry and Security  
Office of Exporter Services  
Attn: "Notice of Inquiry—SME"  
Sheila Quarterman, Regulatory Policy Division  
14th Street & Pennsylvania Avenue, NW  
Room 2705  
Washington, DC 20230  
E-mail: [publiccomments@bis.doc.gov](mailto:publiccomments@bis.doc.gov). Include "Notice of Inquiry—SME"

Subject: Request for Public Comments Regarding Small and Medium Enterprises' Understanding of and Compliance with the Export Administration Regulations  
Reference: Federal Register / Vol. 75, No. 193 / Wednesday, October 6, 2010 / Notices

Dear Ms. Quarterman,

Aptima, Inc. appreciates the opportunity your office extended to industry to provide comments regarding the challenges small and medium size businesses face complying with Export Administration Regulations. Aptima is a small Massachusetts based for-profit R&D firm that specializes in solving the problems of human performance in complex sociotechnical systems. We offer a wide variety of products and services to both industry and Government. We have an export compliance system in place to address both ITAR and EAR regulations and desire to build export business in the future. However, we must admit that we see this as a potentially time consuming and expensive objective, fraught with serious consequences if done improperly. So naturally we are very pleased to see your bureau reach out to small and medium size businesses for recommendations that might better facilitate and promote America's export competitiveness in a manner that is compatible with protecting U.S. security. We believe that increasing our country's ability to compete in this arena is a very viable path to advancing prosperity for all Americans.

In response to your request for comments/experiences/recommendations we provide the following:

(1) Issues/Challenges

- a. Cost of Compliance: The legal and administrative costs of export compliance are formidable for any size business but in our case, where we deal with a variety of technologies across multiple contracts, it is particularly challenging. Many of our contracts are small (~\$100,000), but regardless of size, each individual contract must undergo an export assessment by a team comprised of a project manager, attorney, security manager, senior level scientist, and contracts manager. If the assessment identifies that export material will be encountered on the contract, there are added costs to ensure proper compliance during performance. Additionally, all professional staff must devote time and energy to understanding export regulations and internal policies and procedures so as to not inadvertently contravene them.
- b. Complexity of Regulations: Even for a highly educated workforce like ours, mastering the complexities of ITAR and EAR, and the intersection of the two bodies of regulations, is a difficult task. While this fact obviously increases the cost of compliance it also increases the risk of mistakes being made. Put more concisely, there is probably a strong inverse relationship between the complexity of the regulations and compliance to the regulations.

- c. Serious Downside to Non-compliance: As if high cost and complexity were not enough of an obstacle to trying to enter (or expand) export business, the high cost of non-compliance, despite the good faith of employees, carries tremendous down side risks. Missteps can result in fines and criminal penalties that give reasonable business people pause when pondering the practicality of entering foreign markets or hiring non U.S. persons. At a minimum, the expected ROI of pursuing export related revenue must be set at a higher bar to cover the cost and compliance risk associated with this type of work.
- d. Restrictions on Personnel: A significant percentage of viable technical job applicants these days are not U.S. persons. Therefore, unless we are certain that we will have enough non-export sensitive work for them for a period of time that justifies making an employment offer, it is difficult for us to make the most of this potential talent source. Moreover, when non-U.S. persons are hired, there is a tremendous amount of coordination overhead involved in making sure their workplans avoid exposure to export sensitive material that may reside elsewhere in the workplace. This point is a particular issue for companies like ours that have broad and changing product/service offerings as opposed to companies having a narrow line of product/service offerings.

## (2) The value of current BIS outreach

- a. Aptima appreciates the fact that BIS hosts an online Training Room and posts videos of their Update presentations for access by industry. The Email Notification Subscription service is also a convenient and useful service that helps promote awareness and compliance. Aptima has benefited from these offerings. Additionally, Aptima has sent selected staff members to two fairly recent export seminars sponsored by BIS and the State Department; both were deemed very valuable by Aptima attendees:
  - i. U.S. Department of Commerce Bureau of Industry and Security  
Complying with U.S. Export Controls  
Portsmouth, NH, April 20-21, 2010
  - ii. U.S. Department of State  
Directorate of Defense Trade Control (DDTC)  
Complying with International Traffic in Arms Export Controls  
Portsmouth, NH, April 22, 2010
- b. Aptima has availed itself of BIS export inquiry services and while we receive prompt responses, the counselors often times are unable to provide complete answers to our questions, forcing us to seek costly outside counsel in some instances.

## (3) Recommendations

- a. Currently, the Commerce Department and State Department administer different parts of the export-control rules with input from of the Defense Department and other agencies. We commend the recent plans we have read about that would "create narrower and more consistent rules for defense, technology and aerospace products" and "improve enforcement and coordination between agencies and departments." The idea of having a single licensing agency and a unified and simplified set of regulations that appropriately protects those technologies, products, and services that are truly key to national security is appealing on numerous fronts. In other words, a smaller universe of export controlled items with taller walls around the ones that are controlled, could reduce the cost of doing business, improve America's balance of trade, create more US jobs, and, possibly, unleash an innovation and entrepreneurial boon.



- b. It would be beneficial to have more topical interactive webinars offered by BIS where industry and Government experts could be made available to attendees for intensive Q&A sessions.
- c. We would greatly appreciate a customer help desk phone line staffed by deeply knowledgeable personnel during regular working hours (say, 8:00am to 5:00pm) each week day. Ideally, answers would be given in "real time" over the phone or if necessary due to complexity, within one to two business days.
- d. We think it might be worthwhile to see some sort of "express" review for licenses for newly hired or pending hired non U.S. technical, engineering, or professional persons to work on export controlled products or services. This might help U.S. Companies recruit talent in disciplines that are suffering from serious shortages of qualified workers.
- e. It may also be helpful to have an open method of sharing compliance questions asked by industry with the answers provided by BIS. Less formal than the "Advisory Opinions" and similar to regularly updating the BIS "Frequently Asked Questions", a pool of these questions and answers may provide a readily *accessible* knowledgebase that would help clarify the BIS interpretation of the regulations and help industry comply with the regulations.

It was Aptima's intent to offer the above comments and suggestions in a constructive spirit as your organization looks for ways to modify the export regulations to more effectively promote and expand U.S. trade while protecting national security. Should you have any follow-up questions or wish to discuss the contents of this letter further, please do not hesitate to contact the undersigned at your earliest convenience. Once again, we appreciate the opportunity you offered industry to weigh in on this matter of national importance.

Sincerely yours,

*Margaret J. Clancy*

Margaret J. Clancy, Executive Vice President & Co-founder  
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**From:** "Ford, Brent" <BFord@cosasco.com>  
**To:** PublicComments@bis.doc.gov  
**Date:** Fri, Dec 3, 2010 6:46 PM  
**Subject:** Notice of Enquiry -- SME

Dear BIS:

I am co-owner and CEO of a small California based manufacturer (Rohrback Cosasco Systems, Inc) of specialized instruments and machined products used to monitor corrosion, mainly in the oil and gas industries. RCS was established over fifty years ago within a couple of miles of our current location. Our sales in 2010 will total about \$20m, we employ about 80 people, we are profitable, and we pay a big chunk of money each year to the IRS and State of California in the form of taxes. About 75% of our sales are exported, generating a positive balance of trade, at least at our microscopic level.

Speaking as a small exporter, I simply don't know where to begin in suggesting how you could make your system user-friendly from my perspective. You must first appreciate that we neither have nor can we afford a squadron of lawyers, engineers, and IT personnel to wade through the regulations and specifications to understand them in the first instance, and then develop comprehensive systems to ensure we comply in the second instance. Of course we do our best to comply, but your regulations, which are only a part of the regulatory regime, run to thousands of pages, including highly technical specifications, dense legalese, multi-level country restrictions, and denied party lists that run to thousands of lines.

It is not economically possible for my company to engage the resources required to fully understand, or to be certain we are always in compliance, so we live in fear that we will inadvertently violate the law. My partner owns 75% of our company and is a non-US national citizen residing outside the US. He has recently advocated moving the business to Singapore to escape the perceived "danger" of owning a business in the US. I am hard-pressed to argue against him considering our export compliance concerns, the enormity and absurdity of the tax code, the predatory nature of some federal agencies, and the never ending uncertainty about policy emanating from Washington.

My suggestions for making yourself supportive of SME's are probably not achievable, but I thought I would take the time to write just in case anyone is listening:

1. First of all, you must accept that small companies employing a few people, cannot possibly absorb and administer the myriad regulations churned out by the hundreds of thousands of federal employees who write these things.

2. If you accept that, there is only one thing that can be done: Abolish the vast majority of your regulations. It surely is possible. If it means the US must adopt policies that reduce the likelihood terrorists will want to do us harm, so much the better.

3. If you are unable to dismantle some of the existing regulations, then do nothing. At least it will get no worse.

Sincerely,

Brent Ford

CEO

Rohrback Cosasco Systems, Inc.

11841 East Smith Ave.

Santa Fe Springs, CA 90670

USA

Tel: +1-562-949 0123

[www.cosasco.com](http://www.cosasco.com)

**From:** "Jody Milanese" <jmilanese@nsba.biz>  
**To:** PublicComments@bis.doc.gov  
**Date:** Tue, Dec 7, 2010 2:34 PM  
**Subject:** Notice of Inquiry-SME

To Whom It May Concern:

Attached, please find comments by the Small Businesses Exporters Association (SBEA) regarding Small and Medium Enterprises' Understanding of and

Compliance With the Export Administration Regulations (EAR).

Thank you,

Jody Milanese

Jody Milanese | Senior Director of Government Affairs

National Small Business Association

1156 15th Street, N.W.  
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Washington, DC 20005

o. 202-293-8830

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THE SMALL BUSINESS EXPORTERS ASSOCIATION OF THE UNITED STATES

*America's Premier Association for Small and Mid-Size Exporters™*

Ms. Sheila Quarterman  
U.S. Department of Commerce, Bureau of Industry and Security  
Office of Exporter Services  
Regulatory Policy Division  
14th Street & Pennsylvania Avenue, NW.  
Room 2705  
Washington, DC 20230

Attn: Notice of Inquiry— SME

Dear Ms. Quarterman:

On behalf of the Small Business Exporters Association (SBFA)—a council of the National Small Business Association (NSBA)—the largest and oldest association dedicated exclusively to small and mid-size business exporters in the United States, I appreciate the opportunity to provide comments regarding small and medium enterprises' understanding of and compliance with Export Administration Regulations (EAR).

In his Jan. 27 address to Congress, President Barack Obama pledged to double U.S. exports over the next five years, an increase that will support 2 million jobs here in America. To accomplish this, the administration has launched a national export initiative to help small businesses and farmers increase exports, and reform an antiquated export control system.

Small companies have voiced their concerns for decades about the current export control regime and how they are especially disadvantaged by the current export control regulations because of their limited resources. In fact, back in April 2010, SBFA and NSBA developed a targeted taskforce to address export control issues in the wake of the announcement by Defense Secretary Robert Gates that the administration had plans to reform the export control system.

These onerous regulations are costly to administer, they delay shipments causing financial distress, and put domestic manufacturers at a competitive disadvantage against their foreign counterparts. According to a recent survey conducted by SBFA and the NSBA, nearly half of small-business respondents said they would consider exporting their goods or services if the most significant challenges and barriers were addressed.

While SBEA realizes that export of critical military technologies must be regulated to protect both national security and military interests, the current regulations have flaws that can be rectified without compromising national interests. This would result in a more level global competitive playing field, allowing domestic manufacturers to generate jobs and improve the domestic economy through exports.

According to several of our SME's, the principle challenges faced in trying to comply with the Export Administration Regulations (EAR), is the export control system dictates what they control, how they control it, how they enforce it and how they manage the controls. Currently, there are two different control lists--U.S. Munitions List (USML) and dual use items--administered by two different departments (State or Commerce Department). A problematic issue that SME's frequently encounter is which of these agencies should have jurisdiction and control over a certain commodity. Confusion arises because the determination is based on the definition of a munition which is not entirely clear and rests upon whether an item was designed for a military purpose. Thus, a simple bolt designed originally for a tank is classified as a munition according to the USML.

Meanwhile, the Export Administration Act of 1979 (EAA) mandates the Secretary of Commerce create the Commerce Control List (CCL), which details non-defense good, technology and software. The CCL includes items that are not on the munition list but could have defense uses, and any items controlled for reasons of national security, foreign policy or short supply. There are more than 2,000 controlled dual-use items and EAR essentially applies to all items because exports can be restricted by their categories and destination--end-user or end-use of the product.

SBEA members argue that neither of these lists specify adequate objective criteria and thereby generates confusion in applying the regulations. This is particularly cumbersome at the component level where specifications are often different than the system level. For example, a microwave component may be rated to handle 100 watts but the license criteria apply to all parts and components that enable radar to reach beyond 100 miles; the component supplier typically has no knowledge of whether or how that item supports the range of a system.

SBEA supports the goal of the administration to streamline the current system with an eye toward both economic growth and national security and encourages the creation of one single list of controlled high-technology exports versus the current dual-list, and, ultimately, to task one single agency with oversight of export controls rather than the current multitude of agencies with pockets of oversight.

Small exporters state that the current regime also causes their businesses delays and uncertainly putting them at a competitive disadvantage. The often lengthy and redundant agency license review process frequently results in the loss of sales or customers finding increasingly advanced foreign substitutes that do not require U.S. export licenses. SBEA recommends a rapid decision process (review and approval) if the item is available overseas, specifically for low risk items, and low risk foreign end-users. We recommend

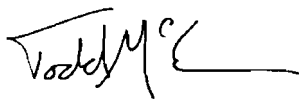
agencies continue to improve the speed with which license reviews are completed by establishing a pre-approval process by product and/or end-user category.

Another industry concern is the lack of transparency regarding why some licenses are approved and others denied or why certain commodities are deemed a munition by the government. The current export controls system does not require the agencies to provide detailed justifications to companies seeking licenses or determinations about which jurisdiction—State or Commerce—applies to a given item. SBEA concludes that accountability for “no” decisions will enable businesses to modify their products and all decisions should be made public in order to provide more guidance to the exporting community. Additionally, the government can help small businesses meet export regulations by establishing proportionality in the assessment of penalties and fines. An honest mistake could prove very costly in defending and/or fines received by a SME. So much so, that this alone could act as a barrier for a small business to enter into exporting activities.

The process of updating the U.S. export control system is an arduous task that may take many months, however SBEA appreciates that steps are underway now to begin addressing some of the most pressing challenges facing small exporters. Ultimately, the U.S. should work to strengthen the export control regime by providing businesses with the clarity and guidance they need to comply with the rules, and remain globally competitive, which in turn will help strengthen our national security.

I appreciate the opportunity to comment on SME’s understanding and compliance with exports controls.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd McCracken". The signature is stylized with a large, sweeping initial "T" and "M".

Todd McCracken  
NSBA President and CEO

**From:** Frank Vargo <FVargo@nam.org>  
**To:** PublicComments@bis.doc.gov  
**Date:** Tue, Dec 7, 2010 2:34 PM  
**Subject:** NAM Comments re: "Notice of Inquiry-SME"

Attached are the NAM's comments with respect to the notice of inquiry regarding SME. Thank you for the opportunity of commenting.

Frank Vargo  
Vice President, International Economic Affairs  
Direct: 202.637.3144  
Email: <mailto:fvargo@nam.org>

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**CC:** [CRobinson@nam.org](mailto:CRobinson@nam.org)



# Manufacturers

Sheila Quarterman  
U.S. Department of Commerce  
14th Street & Pennsylvania Avenue, NW., Room 2705  
Washington, DC 20230

Attention: "Notice of Inquiry—SME"

Via email: [publiccomments@bis.doc.gov](mailto:publiccomments@bis.doc.gov).

Dear Ms. Quarterman:

The National Association of Manufacturers (NAM) is the nation's largest industrial trade association, representing small and large manufacturers in every industrial sector and in all 50 states. Its membership includes both large multinational corporations with operations in many foreign countries and small and medium sized manufacturers (SMMs) engaged in international trade on a more limited scale. About 95 percent of all U.S. exporters are small and medium-sized enterprises, accounting for one-third of manufactured goods exports, or about \$300 billion annually. Thousands of U.S. small and mid-sized companies export and, for many of them, it has been exports that have kept them profitable and preserved jobs during the recent economic downturn.

To reach the President's National Export Initiative (NEI) goal of doubling exports in five years, about \$100 billion of the estimated \$300 billion incremental gain in manufactured goods exports needed will have to come from smaller firms. Creating a predictable, transparent, and efficient export control system is critical for the livelihood of many SMMs and the success of the NEI. We applaud the Bureau of Industry and Security (BIS) for examining the impact of the system on SMMs, and are pleased to provide comments for your consideration. Reforming the export control system and simplifying the system for SMMs will benefit both national security and our competitiveness.

SMMs play a critical role in supply chains supplying parts and components to original equipment manufacturers (OEMs). The 2010 Quadrennial Defense Report (QDR) highlighted the importance of SMMs to our military, stressing the dependence of OEMs on SMMs. The QDR reported that the Department of Defense relies on equipment for the military's operations that is dependent upon second, third, and even fourth-tier suppliers. Input from our members confirms the relationship between SMMs and OEMs. SMMs are disproportionately disadvantaged by the export control system, and reform is necessary to maintain a vibrant supplier base for the military.

The reforms announced by Secretary Gates in April 2010, if appropriately implemented, will simplify the export control system and allow SMMs to more easily navigate the system. However, more must be done to minimize the cost to SMMs. In particular, the perception by the rest of the world that the U.S. export control system is too cumbersome to deal with has negative economic impacts on SMMs.

The NAM's comments highlight five specific issues for BIS and are followed by an attachment which includes anecdotal evidence on the impact of the export control system on SMMs.

### **1. "Design-out" is a Serious Problem for SMMs**

While the NAM hears often from companies of all sizes on the "design-out" U.S. - made products and technology (avoiding U.S. products in their product designs, and stipulating non-U.S. products instead), it is our SMMs that often report the greatest impact on their business. One lost sale to an SMM can be very significant to them. The problem, unfortunately, is not going away. Indeed, the indications are that the situation is becoming more serious. The Europeans began the trend by avoiding the inclusion of "ITAR controlled items," but the trend seems to be increasing not just in Europe but the rest of the world as well. NAM SMMs have lost significant sales to their Asian and European competitors due to this design-out policy. In many cases, the lost business accounts for a significant portion of their annual transactions.

The NAM encourages BIS to engage in a public relations campaign once the proposed reforms have been fully implemented, to highlight that the new system is more transparent, predictable, and efficient. Such an effort would help change the perception aboard that U.S. companies are not dependable suppliers due to the United States' outmoded export control system.

### **2. The Cost of Compliance is High**

SMMs are disproportionately disadvantaged by the current export control system. SMMs cannot afford the infrastructure of a compliance staff typical of larger entities; moreover, most SMMs lack Washington offices and therefore often do not have direct access to the agencies with licensing authority. Lengthy license processing times and the lack of transparency especially affect SMMs' abilities to compete in international markets. For example, on-going employee education, legal advice, and licensing fees, along with employee salaries, can easily run near half a million dollars annually. For a small manufacturer, that is a significant expense. Moreover, the costs of compliance are spread over what is typically a smaller dollar volume of sales for an SMM, making it more difficult to stay competitive.

### **3. A Lack of Transparency Hinders SMMs**

SMMs are also disproportionately hindered by the lack of transparency in licensing decisions and commodity jurisdiction determinations. A single negative licensing decision or commodity jurisdiction determination can quickly impact the financial health of an SMM. For example, NAM SMMs have reported that they have received unfavorable licensing decisions for a repeat license that was previously approved. When they requested additional information on why the license was denied or why more conditions were added to the license, they receive a response that allows them to understand why the decision was made. This creates significant confusion for companies and perpetuates the image that U.S. manufacturers are not dependable partners.

#### **4. There Are Too Many Lists to Check**

Whereas in large companies export compliance is the sole function of several employees, for SMMs export control compliance typically is but one of several responsibilities of a single employee. Given this division of responsibility, the overly complicated, bifurcated nature of the current export control system often creates contradictions and confusion for companies. In particular, currently the number of lists that a company must check for proscribed end-users, end-uses, and destinations is overwhelming. The end-use restrictions should be simplified and consolidated into an easily understandable and downloadable form, with special assistance available to SMMs trying to comply with multiple lists and requirements.

#### **5. Greater Outreach is Needed**

It is not unusual to find SMMs who want to follow the law and government requirements, but are unaware of the many different facets of the U.S. export controls system. SMMs also encounter difficulty in determining whether or not their products or technologies are covered by the system in general or for specific destinations or end users. Many SMMs are also unaware of the outreach BIS has available to help educate SMMs. Much more is needed to properly work with SMMs to educate them on the requirements and provide sufficient outreach.

#### **Recommendations**

- Partner with the District Export Councils to provide assistance to SMMs and to reach a larger number of SMMs.
- Conduct more conferences and webinars for SMMs, to include both general information about the export control system and compliance, as well as how to obtain product and technology-specific information.
- Establish an interagency task force to develop recommendations on how BIS and Directorate of Defense Trade Controls (DDTC) can be made more accessible, responsive, and user-friendly for industry, particularly SMMs.
- Provide dedicated counselors/license officers specialized in SMM exporter issues, and publicize this widely through government and private channels.
- Add a note to all commodity classification determinations informing the exporters that their product or technology could still be controlled under the International Trafficking in Arms Regulations (ITAR) even if a license isn't required under the Commerce Control List (CCL).

## **ATTACHMENT: Examples from SMMs**

1. An SMM that is particularly well-regarded in the aerospace industry related that in 2009, at least two European airframe manufacturers instructed their engineers not to use ITAR-controlled components in new designs, including the company's products. Now, the anti-ITAR edict has been extended to include all American components (due to the increased penalties & restrictions). This is an increasingly problematic trend.

The SMM told one of DDTC's licensing officers that the European aerospace industry was starting to ban the use of American components in new designs. The licensing officers were completely unaware of this bias.

2. An SMM applied for an export license on a simple solenoid valve destined for a Korean customer who was to manufacture a hydraulic system for a Korean Unmanned Aerial Vehicle (UAV). The Korean customer in question currently purchases category VIII defense articles for the assembly of F-16 hydraulic systems for the Korean Air Force. The UAV's solenoid valve required minor modifications to the SMM's standard product. Consequently, it became a defense article per ITAR.

The SMM realizes UAV's are a sensitive topic in the defense industry. Yet, the solenoid valve was to be used in a hydraulic actuation system for deploying landing gear comparable to that used on a small business jet. The SMM was denied an export license for its product.

DDTC offered neither an explanation nor any means to appeal their decision. The SMM's customer had to make a last minute change to their hydraulic system design in order to accommodate a more expensive solenoid valve from a French competitor. The customer is now reluctant to specify the SMM's products on future designs.

3. Another SMM has Eurocopter as one of its most significant and long-standing customers. The SMM's was unable to bid on customized components for Eurocopter's EC-175 aircraft due to a commodity jurisdiction determination in the U.S. export control process. Eurocopter then turned away from the U.S. SMM and awarded the contract to the SMM's European competitor for all of the elastomeric bearings and dampers. That aspect of the EC-175 program was worth \$50 million and the U.S. SMM had typically won at least 50% of the market share in other similar programs. Eurocopter has stated it is becoming concerned with the difficulties in working with US-based companies due to export control requirements.
4. Eurocopter has implemented a "family concept" with many of its peripheral hardware items, including this SMM's active valve control system (AVCS). Recently, Eurocopter issued a request for information (RFI) for a cabin-based AVCS for their medium helicopter family (including their EC-225, Dolphin, and EC-175 models). Due to this SMM's inability to bid on the EC-175 helicopter due to the U.S. commodity jurisdiction problem, the SMM received an altered RFI that only included the EC 225 and Dolphin models. The SMM is aware that Eurocopter submitted un-altered RFI to other European competitors. The SMM anticipates that one of them will be awarded the contract for the AVCS on these three helicopter models.



The SMM is currently the supplier of the AVCS on the EC-225 model and with this new family approach, the SMM faces the very likely possibility of losing \$2 million of sales annually. In addition, the value of the other platforms involved is an additional \$3-\$4 million per year, from which the SMM will likely be excluded. The inability of the SMM to participate creates an opportunity for a competitor to begin to supply AVCS systems to other customers for future commercial and dual use programs. The long term implications are difficult to estimate, but could easily approach tens of millions of dollars.

5. SAGEM, a French manufacturer of inertial guidance systems, has been a long standing customer of another U.S. SMM. SAGEM's vibration isolators were classified USML: VIII(e), which requires the SMM to ask SAGEM to obtain formal End Use Certificates (EUS's) from all customers purchasing the Rafale aircraft, i.e., Ministries of Defense using or about to purchase the aircraft. As a result of the ITAR requirements, SAGEM has decided to direct their purchases to European companies, which has resulted in a loss of business for up to \$1 million annually for the U.S. SMM.
6. A U.S. SMM manufactures two-inch long metal cylinders with rubber bonds originally designed by the SMM in the 1950's to absorb engine vibration for the Sherman tank. Since the 1960's, the same part has been used for a street sweeper in Germany. This part maintains an ITAR classification to this day, and requires license approval from the State Department to ship to Germany.
7. Another SMM recently lost a contract to supply a Chinese customer with police body shields, because U.S. companies may not export crowd control devices to China. Soon after the SMM was unable to bid on the potential new contract, it lost another contract – this one when the Los Angeles police department purchased body shields of the same design from a Chinese company.
8. A SMM lost \$500,000 in revenue based on license denials to Taiwan. The denied exports represented 20% of the SMM's total sales revenue. When the SMM inquired for more information to explain the rationale for denial, the SMM received a form response from the U.S. government which provided no further justifications for the denial. This SMM reports suffering economic harm as a result of the denial.
9. Another SMM lost a long-term customer based on a country's new "U.S. material-free" requirements. This SMM's client primarily sold directly or through European Union (EU) higher tier customers. The SMM has lost all its business with this firm. The customer indicated that they made a corporate decision to not allow any U.S.-made products into their systems due to the onerous burdens of obtaining licenses from the United States. The customer indicated that their end customers in Asian governments such as Taiwan and South Korea, as well as EU higher tier customers have put provisions into their contracts that explicitly forbid the use of U.S. - manufactured articles.

They indicated that requirements for import licenses from the United States on items such as sheet metal, wire, electrical connectors, and other items are overly burdensome. These items are normally bought to stock without a specific order or customer at the time they are purchased. Through the U.S. import license requirements, these items now need to be traced through the higher tiers to obtain a certificate of end use. The foreign company views these as readily available commodity type items and is perplexed as to the need for ITAR restrictions. As a result, the SMM's products were replaced by parts made in China.

10. Commodity Classification mishap: An SMM was told by BIS that his company's product was not on the Commodity Control List, but nobody asked him if he ever tooled his parts for military use. As a result, this SMM unknowingly exported ITAR-controlled products. The commodity classification document did not offer any cautions about design/modification for military application. It is likely that other SMMs have faced a similar experience, given the volume of commodity classifications BIS issues annually. Much better coordination is needed so that exporters understand they need to check the DDTC lists as well as Commerce's lists.