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To: 'publccomments@bis.doc.gov'
Subject: RIN 0694-AG00 -- Proposed Rule on Support Documents

5 June 2014

Comments on Proposed Changes To Export Administration Regulations Documentation Requirements (RIN 0694-AG00)

The subject Bureau of Industry and Security notice of proposed rulemaking (79 FR 19552, April 9, 2014) is a welcome and helpful response to recommendations that BIS end the outdated and ineffective requirements for International Import Certificate and Delivery Verification documents. This change will eliminate for many export transactions pointless red-tape that can delay exportations by U.S companies and present marketing obstacles not faced by suppliers from other countries. The suggestions here are limited to a few changes that could be made without major revision of the rule and without unduly delaying issuance as a final or interim regulation.

Suggested Changes

(1) Proposed sections 748.9(b)(1) and 748.9(b)(3) introduce the term "ultimately" destined, whereas section 748.9(b)(2) refers just to "destined." This could be confusing. The term "ultimately" should be deleted, absent justification for and explanation of the distinction.

(2) The proposed rule's addition of new Supplement No. 4 to Part 748, providing the "support document" guidance and chart, is helpful. A modest suggestion in this context is to add "Support Document" to Part 772 of the EAR as a defined term, taking care to avoid inconsistency with the existing definition of "Export Control Document." A more far-reaching suggestion is that this new term should replace the awkward yet inadequate term "Statement by Ultimate Consignee and Purchaser." This term is a mouthful that does not even support a convenient abbreviation or acronym. Moreover, this term can be inadequate, because it does not identify all persons that might reasonably be required to make representations to the licensing authority regarding prospective use or disposition of the controlled items. For instance, there may be no "purchaser" involved or some person other than the "ultimate consignee" may be acquiring control over the further disposition of the item. My suggestion is to substitute the term "Recipient Statement." This term could be defined in the EAR to identify the appropriate persons to be called upon in particular circumstances to make the relevant representations, leaving the licensing authority free to modify or expand the requirement when the situation warrants. The term "support document" could continue to encompass documents obtained from persons involved with the items ("Foreign Recipients") and documents obtained from governmental authorities.

(3) Should support documents be submitted to BIS as part of the license application? The current EAR contains inconsistent provisions. For example, section 748.9(i) deals with the return to the applicant of support documents "submitted to BIS," but section 748.10(g)states that such certificates and statements "should not be submitted with the license application." The proposed rule does not appear to require the submission of support documents, but proposed section 748.9(f) provides, ambiguously, that "applicants must

retain on file the original copy of any support document issued in support of a license application submitted to BIS." Proposed section 748.11(d)(2) states that applicants "are not required to submit a copy of the statement with the application." The final rule should remove any ambiguity in this regard. It makes sense for the licensing agency to have the opportunity to consider such documentation in reviewing the license application. The acceptance of electronic transmission and the validity of electronic signatures should eliminate any appreciable burden in requiring submission of duplicate original documents. The retention of such documents by BIS could have added benefit through making them available in support of possible future enforcement action against the foreign declarant.

I also have in mind a number of ideas for more extensive possible improvements in export data and documentation requirements that I intend flesh out and submit soon for consideration by BIS and others. The main objectives of these further points are:

(a) to obtain cost-benefit analysis of steps to strengthen and broaden notice of the control classification through use of prescribed content in normal commercial and customs documentation, thereby eliminating or reducing the need to obtain special documents from customers;

(b) to place export documentation provisions for transactions that do not need an export license in the customs regulations to the greatest extent possible, so as to make it unnecessary to provide redundant data and documents to more than one agency under more than one set of regulations;

(c) to reassess the special documentation provisions for shipments to "the Americas" and shipments subject to the "Firearms Convention" regulations; and

(d) to consider what changes may be needed to deal with the "gap" in data available to control agencies with respect to exportation of software and technical data due to the broad availability of license exceptions, the limited role of border controls, and the regulatory exemptions from end-user statement requirem

Respectfully submitted,

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