June 9, 2014

U.S. Department of Commerce
Bureau of Industry and Security
Regulatory Policy Division
1401 Constitution Ave NW
Room 2099B
Washington, D.C. 20230

To Whom it May Concern,

The Aerospace Industries Association (AIA) and our member companies appreciate the opportunity to comment on the Department of Commerce's proposed changes to supporting documentation required to be submitted for license applications under the Export Administration Regulations (EAR), as well as the Bureau of Industry and Security's (BIS's) role in issuing documents for the Import Certificate and Delivery Verification system. Below we would like to highlight a few concerns and requests for clarification raised by our membership.

Background Section

Change to the IC/DV Systems: In its proposed changes to the IC/DV system BIS states that the US Government has unsuccessfully attempted to implement changes to the import certificate requirement through Wassenaar, "but participating countries have not reach a consensus on this issue". If this is the case, wouldn't other countries refuse to issue licenses/delay approvals if they believe in continuing the implementation of this requirement? Has the U.S. government assess the impact to US exporters/US exports of eliminating the issuance of this document in this manner?

Request for Clarification: The rule mentions that ATF will continue issuing USML I/Cs. ATF only has jurisdiction over USMIL and has stopped issuing USML-related I/Cs. Our companies have requested clarification that ATF will only issue for USMIL.

§748.9

AIA's member companies expressed confusion regarding this section, and we propose the following language changes to increase clarity:

Paragraphs (a) OR (d): We request that these sections include a note that support documents ARE NOT required for end-users.

- AIA recommends the following language: "Applicants do not need to obtain support documentation for end-users".

Paragraph (b)(1): AIA recommends striking "for certain transactions". The chapeau already says there is no requirement if the item is excepted by paragraph (d).

Paragraph (b)(2): We recommend rewording to "license applications for exports of firearms and related commodities to destinations listed in Country Group A:7"

Paragraph (b)(3): We recommend changing the language in this paragraph to "license application for exports to destinations NOT identified in Country Group A:7." If BIS already has country groups identified in Supplement 1 to Part 740, is there a need to create an extra layer of country-groups in 772 to define the Americas? The OAS is a regime the U.S. participates in that creates benefits and requirements, and should be included in A like the other main regimes. Also, it is easier for the average exporter to have them all in one section versus several (e.g. 740, 772).

Paragraph (e)(1): Is the English translation paragraph required here?

Paragraph (f)(1): AIA recommends striking the requirement to retain the original requirement on file. Due to email and other electronic tools, our companies may not receive an original, but will receive a copy that meets the requirements of 762.5. AIA suggests the following language: "license applicants must retain on file the support document related to a license application submitted to BIS.

Paragraph (h): AIA recommends striking "import certificate," as they are being eliminated.

§748.10

AIA's member companies expressed confusion regarding this section, and we request clarification and/or propose the following language revisions:

Paragraph (a)(3): AIA's member companies request clarification if this paragraph refers to the total value of the license or a line item.

Paragraph (b)(1): We make the same recommendation for this paragraph as our rationale stated for 748.9(f)(1), as well as the removal of the last sentence requiring original.

Paragraph (b)(2): Our members ask how BIS is going to ensure the address for the Export Control Division 1 of the PRC's Ministry of Commerce; Department of Mechanic, Electronic and High Technology Industries is current, and if the regulation is the best place for this address. Having it on the BIS website with a reference in the regulation may be more effective.

Paragraph (d): China has traditionally taken a very long time to issue End-User Statements. Our members recommend that leeway could be given the applicant to obtain the license, but with the condition not to export until the document is on file.

Paragraph (d)(5): We believe that an end-user statement should be valid until all items listed are shipped. MOFCOM will not issue new ones until that happens.

Paragraph (e)(2): If the end-user certification is identifying specific goods to be exported by a specific **US exporter**, our members request clarification as to the concerns of it being returned to the PRC, as they would be unable to use it and this is immaterial if the applicant is allowed to retain a copy.

§748.11

With the implementation of Export Control Reform, AIA recommends that BIS mirror DDTC and only require ultimate consignee statements for items that are on the Wassennar Very Sensitive List. Currently, the ITAR only requires end-use statements (DSP-83) for SME items. Additionally, our members have the following questions and recommendations:

Paragraph (a): Can examples be provided for further clarity?

Paragraph (c): Similar to the license application requirements, all the requirements of using company letterhead should be in a Supplement [748.11(c)] or in a sample on the website.

Paragraph (d)(ii): AIA recommends a timeline of four years to be consistent with current license expiration date.

§748.11 (part 2)

The Statement of Ultimate Consignee and Purchaser as outlined in §748.11 could be regarded as the Commerce Department's equivalent to the State Department's DSP-83 Non-transfer and Use Assurances[1]. Both documents are signed by the foreign parties and provided as license submission support documentation in certain circumstances. The key difference between when these documents are required to support a license submission is that the EAR utilizes situational parameters to determine necessity and the ITAR ties the necessity to the exported item itself. Under the ITAR, if the product being exported is designated as Significant Military Equipment (SME) it will always require a DSP-83 to support its export license submission (with very limited exceptions). The only exceptions are when the export is temporary or for permanent sales directly to the Canadian Government[2]. Under the EAR, the dollar value of the export request and the country of end use appear to be the guiding determinants. With such dissimilar approaches to support documentation requirements, there will inevitably be times when support documentation would be required under the EAR that previously did not exist under the ITAR. Therefore, those items shifting to the EAR as a result of Export Control Reform (ECR) will be subject to requirements that previously did not exist.

The EAR provides for certain exceptions from providing the Statement of Ultimate Consignee and Purchaser. The proposed changes to the EAR[3], although very similar to what currently exists in the EAR; produce an appearance of inconsistent and potentially unfair treatment of exports to our largest allies. Specifically, the majority of the U.S. defense allies are from countries outside of the territories identified as "Americas". For example, requiring a Statement of Ultimate Consignee and Purchaser from companies in the U.K. but not requiring it from Nicaraguan or Colombian companies seems unbalanced. Please consider the following as illustrative examples of applying the support documentation exceptions as outlined in the EAR Proposed Rule:

U.K. Government End User:
A license submission related to the sale of $100,000 worth of hardware captured at ECCN 0A606.x to the U.K. Government (a country identified as not part of the Americas) through their contracting agent, a

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[1] See §123.10
[2] See the Department of State, Directorate of Defense Trade Controls' Guidance on ITAR Exemption Effective May 30, 2001, page 4, identifying that separate diplomatic notes are in place between the two governments to allow for such an exception.
[3] See Federal Register Proposed Rule, RIN 0694-AG00, dated April 9, 2014

U.K. company, would require a statement from the U.K. company but not the government. Previously under the ITAR, the same license submission would not require a DSP-83[4] from either party.

Nicaraguan Government End User:
A license submission related to the sale of $100,000 worth of hardware captured at ECCN 0A606.x to the Nicaraguan Government (a country identified as part of the Americas) through their contracting agent, a Nicaraguan company, would not require a statement from either the Nicaraguan company or the government.

The above example demonstrates the unbalanced nature of the requirements to obtain a Statement of Ultimate Consignee and Purchaser for items previously controlled under the ITAR.

There language used in §748.9 (d)(1) outlined below requires clarification.
....no support document is required for any of the following situations:

(i) ..... If either the ultimate consignee or purchaser is not a foreign government or foreign government agency, however, a support document may still be required from the nongovernmental party;

Please provide clarity on what would constitute a situation where documentation MAY still be required. The lack of additional reference makes this section unclear.

It was noted that no exception existed for a U.S. Government end user in a foreign country.

Conclusion:
The Department of Commerce should adjust its approach to when a Statement of Ultimate Consignee and Purchaser will be required to support license submissions. Their approach should be more in line with the Department of State's ITAR and be based on the item being exported rather than the value of the items being exported. One of the goals of ECR was to put the highest walls around the most sensitive products which should also translate to the items on the CCL. Any additional support documentation for license submissions should only be required when the item's controls necessitate the additional step and effort to obtain a Statement of Ultimate Consignee and Purchaser. Another goal of ECR was to eventually align the regulations under one agency. Adjusting requirements such as support documentation will assist in the eventual evolution of export control regulations.

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[4] This assertion is based on the various publications regarding the purpose for transitioning items to the CCL under ECR and that those items moved from the USML to the CCL were not Significant Military Equipment (SME).

§748.13

Recommendation: For BIS-711, since there is no requirement to submit, it seems more appropriate to require that a dated letter be kept on the license file as to why the document was not obtained.

Supplement 4 to Part 748

Request for Clarification/Recommendation: AIA's member companies found the table confusing and we recommend making 748.9 tighter and instead posting a decision tree to the BIS website.

Best Regards,

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