AEROSPACE INDUSTRIES ASSOCIATION

Regulatory Policy Division
Bureau of Industry and Security, Room 2009B
U.S. Department of Commerce
Washington, DC 20230

Subject: AIA Public Comments on 79 FR 59166 (RIN 0694-AG30)

The Aerospace Industries Association (AIA) and our member companies appreciate the opportunity to comment on the Department of Commerce's proposed revisions to the recordkeeping requirements of the Export Administration Regulations (EAR). Within the Federal Register Notice BIS sough comment on six questions pertaining to possible improvements of the recordkeeping requirements. Please find below a response from one of our member companies to each question, where applicable.

Q1: How have the current recordkeeping requirements of the EAR positively or negatively affected organizations? Quantitative analyses on this topic would be beneficial.

Response: Many members of AIA are defense companies who are new to utilizing the EAR and therefore cannot provide quantitative analysis on the differences between the old requirements under the EAR and the current regulation.

Q2: Are there any recordkeeping provisions or references to documents that are out of date? Are there provisions in the recordkeeping requirements that should be updated to take into account technological changes in how business is conducted and records are maintained?

Response: AIA suggests that BIS consider the duration (shelf-life) of the SNAP-R electronic system's functionality to comply with the 5-year retention policy established under § 762.6. § 762.2(a)(1) appears to not require an exporter to keep a separate record of any submissions through the SNAP-R system; therefore, BIS is the record keeper. Those records must be produced if ever requested by OEE. For illustration purposes, use the example of a license submitted and approved in 2014 with a 2 year expiration date. The license submission is required to be maintained through 2021. With the fast-paced evolution of electronic systems, BIS is asked to consider the viability of keeping records in SNAP-R to comply with § 762.6. Furthermore, it is recommended that BIS consider those requests submitted to date in SNAP-R and establish a game plan for any future system changes. Those records must be maintained; however, the exporter is reliant upon BIS to keep those records intact as they do not have a separate record. BIS should be prepared for electronic evolutions of SNAP-R and plan accordingly to accommodate data migration.

BIS should also consider the implications of the establishment of one IT system under Export Control Reform and whether SNAP-R will be the surviving system. Again, it is suggested that BIS establish an IT game plan for any future system changes to properly handle the transfer of records maintained in SNAP-R.

Lastly, AIA suggests that § 762.2 be updated to include a catch-all reference of documentation pertaining to the export shipment in either electronic or paper format (e.g., Memorandum, E-mails, Notes, etc).

Q3: Should the recordkeeping provisions make transactional distinctions on when records should be created or maintained? For instance, should intangible transfers of technology or software be treated differently than tangible exports or reexports for record creation and record retention purposes? Or would it be preferable to avoid making distinctions in order to have more clear and concise requirements?

Response: AIA believes that the requirements outlined in § 762.1(a)(2) are sufficient to address intangible exports and no additional clarification is required.

Q4: Would be efficient to make a distinction in Part 762 between provisions that require the maintenance of records created in the ordinary course of business as opposed to those that require the creation of records for export control purposes that would not otherwise be created in the ordinary course of business?

Response: No Input

Q5: Are there any record creation requirements in the EAR that should be reviewed or revised?

Response: AIA provides the following comments regarding provisions and references regarding recordkeeping under the EAR.

a. **Subject: Export records for Canada (Reference § 762.1(a)(3))**
If interpreted correctly, § 762.1(a)(3) does not require an exporter to maintain any records of exports (temporary or permanent) to Canada as long as the item exported stays within Canada or is returned to the U.S. BIS should clarify whether the distinction it is making with regard to Canada in this subsection is meant to exempt out normal exports to Canada from all recordkeeping requirements or whether this is simply an amplifying note to the other sections of § 762. The language appears duplicative of other subsections and if solely an amplification, it is suggested that BIS simply add a note to § 762.1(a)(2) and remove § 762.1(a)(3) entirely. AIA further recommends BIS consult the Foreign Trade Regulations (15 CFR Part 30.10) recordkeeping requirements for consistency in application.

b. **Subject: SNAP-R records (Reference §§ 762.2(a)(1) and 772)**
In reading § 762.2(a)(1), it would appear that BIS does not require an exporter to keep a separate record of any submissions through the SNAP-R system. However, if interpreted correctly, § 762.4 identifies that an exporter is required to maintain a

Additionally, it would appear more practical to simply remove SNAP-R submissions from the § 772 definition of *export control document*. If the SNAP-R submission is not meant to be maintained by the exporter, then it is suggested that it be carved out of the definition of *export control document*.

c. **Subject: Definition of Export Control Documents (§§ 772, 30.10, and 22 CFR 127.2)**
It is recommended that BIS coordinate the definition of *export control document* with the Department of State in order for it to be consistent with the ITAR (see representative section § 127.2) as well as with the Census Bureau for consistency with the Foreign Trade Regulations (§ 30.10.b).

d. **Subject: Scope and Records (§§ 762.1 and 762.2)**
Restrictive trade practice or boycott documents and reports as identified in § 762.2(a)(1)(9) are already required by § 762.1(a)(1). Suggest removing the duplicative reference in § 762.2(a)(1)(9).

Q6: Are there any recordkeeping requirements under U.S. or other law that would serve as good examples for the EAR?

Response: See the Foreign Trade Regulations (§ 30.10).

Best Regards,

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