

## RECORD OF PUBLIC COMMENTS

### NOTICE OF INQUIRY: REQUEST FOR PUBLIC COMMENTS ON THE UTILIZATION RATE OF EXPORT LICENSES ISSUED BY THE BUREAU OF INDUSTRY AND SECURITY.

Publication in the Federal Register: [March 20, 2009 \(74 FR 11908\)](#)

Comments due May 4, 2009

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In accordance with the Board's regulations, Diane Finver of the FTZ staff is designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 19, 2009. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to June 3, 2009).

A copy of the request will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230-0002, and in the "Reading Room" section of the Board's Web site, which is accessible via [www.trade.gov/ftz](http://www.trade.gov/ftz). For further information, contact Diane Finver at [Diane\\_Finver@ita.doc.gov](mailto:Diane_Finver@ita.doc.gov), or (202) 482-1367.

Dated: March 12, 2009.

Andrew McGilvray,  
Executive Secretary.

[FR Doc. E9-6162 Filed 3-19-09; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

[Docket No. 090129078-9079-01]

#### Request for Public Comments on the Utilization Rate of Export Licenses Issued by the Bureau of Industry and Security

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

**ACTION:** Notice of inquiry.

**SUMMARY:** A significant percentage of the export licenses issued by the Bureau of Industry and Security (BIS) appear to be unused or used for less than the quantity or value limits authorized by the license. BIS seeks public comment to help it ascertain the reasons for such lack of use or under use. BIS is particularly interested in whether characteristics of the export license application review process induce applicants to apply for greater authorizations than they need and, if such is the case, any costs associated with such applications.

**DATES:** Comments must be received no later than May 4, 2009.

**ADDRESSES:** Comments may be submitted via e-mail to

[publiccomments@bis.doc.gov](mailto:publiccomments@bis.doc.gov). Please refer to "Utilization Rate of Export Licenses Issued" in the subject line.

Comments may also be sent to Utilization Rate Study, Office of Technology Evaluation, Room 2705, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Watts, Office of Technology Evaluation, Bureau of Industry and Security, telephone: 202-482-8343; fax: 202-482-5361; e-mail [jwatts@bis.doc.gov](mailto:jwatts@bis.doc.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

BIS, among its other activities, issues licenses for export of items that are subject to the Export Administration Regulations. Most such licenses are valid for two years. A recent BIS review of export data from the Automated Export System (AES), which is used to record actual exports from the United States, indicated that by the end of calendar year 2007, forty-eight percent of the licenses issued in calendar year 2005 for the export of commodities had not been used at all. In addition, some licenses may have been used for less than the full quantity or value authorized. Finally, BIS has no basis for estimating whether similar lack of use or under utilization exists with respect to licenses for the export of software or technology because such exports are often intangible and, therefore, not reported in AES. BIS is seeking information that would help it determine:

- Whether software and technology export licenses also are not used or are underused;
- The reasons that export licenses sometimes are not used or are underused; and
- Whether characteristics of the export licensing process (*e.g.*, ease or difficulty of use, processing times, degree of communication between the government and the applicant, license conditions, etc.) contribute to the practice of not using or under-using export licenses.

The scope of this inquiry is limited to export licenses. It does not encompass reexports, deemed exports or deemed reexports.

*The following kinds of information would be useful to BIS's assessment:*

- Whether exporters seek an export license prior to receipt of a purchase order or letter of intent, and examples of typical business cases for seeking a license absent such documentation;
- Detailed information concerning instances when exporters have obtained

an export license from BIS but then did not use it or used it for less than the quantity or value authorized, including information on whether the export licensing process impacted the transaction, whether sales were lost due to the licensing process and the dollar amount of any such lost sales that are directly attributable to the licensing process;

- Specific information about whether licenses for the export of software or technology are not used or are under used;
- Whether an extension of the validity period of export licenses issued by BIS would increase the probability of the utilization of licenses; and
- Process improvements that BIS could make to enhance the utilization of export licenses (*e.g.*, expedited treatment for applications under specific circumstances).

In the future BIS may seek a more systematic approach (*e.g.*, surveys) to contact exporters and document the reasons impacting licensing utilization rates to further facilitate the utilization of export licenses.

#### How To Comment

All comments must be in writing and submitted to one of the addresses indicated above. Comments must be received by BIS no later than May 4, 2009. BIS may consider comments received after that date if feasible to do so, but such consideration can not be assured. All comments submitted in response to this notice will be made a matter of public record, and will be available for public inspection and copying. Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public record. BIS will seek to protect business confidential information from public disclosure to the extent permitted by law.

Dated: March 16, 2009.

Matthew S. Borman,  
Acting Assistant Secretary for Export Administration.

[FR Doc. E9-6164 Filed 3-19-09; 8:45 am]

BILLING CODE 3510-JT-P

**From:** "Doyle, Kenneth D (KDOYLE)" <KDOYLE@arinc.com>  
**To:** <publiccomments@bis.doc.gov>  
**Date:** 3/20/2009 9:32:46 AM  
**Subject:** Utilization Rate of Export Licenses Issued

The following is a personal observation and not necessarily the view of ARINC, Inc.

There are a variety of reasons why licenses may not be fully utilized:

1. The contract is terminated before the anticipated work effort has been completed; e.g.,
  - a. Contract re-bid during performance period and awarded to new contractor
  - b. Contract options not exercised
  - c. Funding evaporates
  
2. Contract modified and hardware on export license is incorporated into an ITAR "system", negating the need for the BIS license
  
3. Contract/project modified and licensed hardware no longer required
  
4. Licenses are submitted in anticipation of best case scenario, which doesn't materialize
  
5. Unanticipated program complexity negates need for anticipated hardware
  
6. A lack of advanced strategic planning by the contractor resulted in extra licensing

The licensing process itself does not induce applicants to apply for greater number of authorizations than necessary. It is simply the need to apply for an export license which mandates that each license include the maximum hardware/technology to limit the staff time devoted to licensing requirements. This leads to zealous licensing because of the extra time involved in multiple applications, to revisit licensing requirements, and to track multiple licenses. For many companies, export licensing is a non-revenue producing add-on activity for individuals otherwise engaged in

day-to-day efforts that generate income, so duplicative effort to evaluate licensing requirements is inefficient.

Having an unnecessary license has less economic impact than not having enough license(s) when required.

Ken

Kenneth Doyle, Esq.  
ARINC  
Export Compliance Attorney

6400 SE 59th Street

Oklahoma City, OK 73135  
(O) 405.605.7145

(C) 417-861-3067  
(F) 405-601-6029

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This e-mail (including any attachments) is intended only for the use of the individual or entity named above and may contain privileged, proprietary, or confidential information. The information may also contain technical data subject to export control laws.  
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**From:** "Jerry Gamroth" <jerryg@infrared.com>  
**To:** <publiccomments@bis.doc.gov>  
**Date:** 3/22/2009 7:01:22 AM  
**Subject:** Utilization Rate of Export Licenses Issued

Sirs,

Re the issue of unused export licenses: Many small businesses, like ourselves, receive orders for controlled Items (EAR) and these orders are not processed, or components ordered until the license is approved. The orders often times are for more than one delivery over a period of time. The customer always requests volume, I.E. Discount pricing and sometimes the balance of the orders are cancelled due to financial constraints or for other reasons. Small businesses cannot afford to stock the items for future delivery and therefore when the customer cancels the remainder of the order, we must cancel or not use the deliveries that are authorized in the License. There are times when a license application is submitted, and at or near the time of approval and issuance, the customer decides to purchase from an entity in another Country, due to the lengthy time element involved in the licensing and the companies production process. The time for investigation and approval of BIS 711 submissions is often lengthy at US Embassies.

Many companies are focusing on international sales to offset their business losses in the domestic market. Couple this with our trade deficit and I think this is not the time to increase fees, add or complicate regulations that make it difficult and add more expense to exporters in the license process. The DOC should look at ways to ascertain what IT can do in a constructive way to assist exporters in this problem, especially as it relates to the timeline of license approval. Thank you for your consideration of this matter.

Jerry Gamroth

V. J. "Jerry" Gamroth

Director of Operations

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**CC:** <Bill.Cline@mail.doc.gov>

**From:** RPD PublicComments  
**To:** HAJEN, RYAN; MILLER, ASHLEY; WATTS, JENNIFER  
**Date:** 3/23/2009 6:20:55 PM  
**Subject:** Fwd: Under utilization of export licenses

Guess the following comments (submitted by Nancey Ferguson, List Biological Laboratories, Inc.) apply to a FR notice published by your office. Unfortunately, the comments do not identify the pertinent FR document.

>>> "Nancey Ferguson" <[nferguson@listlabs.com](mailto:nferguson@listlabs.com)> 03/23/09 6:43 PM >>>  
At our company, we routinely request a few more vials than the customer requests for the 2 year period. This is because the license is governed by the dollar amount and not the amount of product. We have price increases on our products every year, and we feel that this is the simplest way to protect our customers and allow them to order all of the vials that they need without re-applying for a license that has been depleted due to the dollar amount running out before the amount of product has been used up. I have no explanation as to why some customers apply for licenses for products and then do not order them and their license remains unused. We have experienced this as well, but not to a great degree.

Thank you.

Nancey Ferguson

Document Control and

Export License Administration

List Biological Laboratories, Inc.

540 Division Street

Campbell, CA 95008

408-866-6363

408-866-6364 fax

800-726-3213 toll free

408-874-1303 direct

**From:** RPD PublicComments  
**To:** HAJEN, RYAN; MILLER, ASHLEY; WATTS, JENNIFER  
**Date:** 3/23/2009 6:23:57 PM  
**Subject:** Fwd: Utilization Rate of Export Licenses Issued

Guess the following comments (submitted by Maryann Ingenito, Export Regulations Specialist / Sales and Service Coordinator, HORIBA Jobin Yvon, Inc.) apply to a FR notice published by your office. Unfortunately, the comments do not identify the pertinent FR document.

>>> <[MIngenito@mail.Crimescope.com](mailto:MIngenito@mail.Crimescope.com)> 03/23/09 4:38 PM >>>

Hello,

I wanted to comment on the above issue. We have found that sometimes if there is a delay in receiving the license from BIS - our customer will cancel the order completely and go to our competitor. This happens only on occasion.

The under utilization usually results from our placing the license request based solely on what the salesperson quotes to the end user. In some cases - the end user will only purchase part of the system or leave off some of the options in their final order. This results in us using less than the original value we requested on the license application.

We make every effort to wait until we have an actual order in hand BEFORE placing the license application - but this is not always possible. Especially if we have a shortened delivery time.

I hope this information helps!

Best Regards,  
Maryann Ingenito  
Export Regulations Specialist/ Sales and Service Coordinator  
HORIBA Jobin Yvon, Inc. / SPEX Forensics Division  
A HORIBA Scientific Company  
3880 Park Avenue Edison, New Jersey USA 08820  
Phone: 732-623-8111  
Fax: 732-623-8273  
E-mail: [mingenito@mail.crimescope.com](mailto:mingenito@mail.crimescope.com)  
[www.HORIBA.com/Scientific](http://www.HORIBA.com/Scientific) [www.crimescope.com](http://www.crimescope.com) [www.spexforensics.com](http://www.spexforensics.com)

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**From:** RPD PublicComments  
**To:** HAJEN, RYAN; MILLER, ASHLEY; WATTS, JENNIFER  
**Date:** 3/23/2009 6:25:59 PM  
**Subject:** Fwd: License Process Comments

Guess the following comments (submitted by Andrea Isear, Quality Assurance Manager and Compliance Officer, Harry Krantz Company, LLC.) apply to a FR notice published by your office. Unfortunately, the comments do not identify the pertinent FR document.

>>> "Andrea Isear" <[Andrea.Isear@harrykrantz.com](mailto:Andrea.Isear@harrykrantz.com)> 03/23/09 10:07 AM >>>  
Dear Sir/Madam:

From our business, because of the length of time to research the information on whether a license is required (example - needing the ECCN number, understanding which laws are applicable, etc.) and then the license application time period itself, our customers tend to cancel the order or reduce the quantity necessary because they have their order amended or the project cancelled.

I hope this information is helpful.

Regards,

Andrea Isear  
Quality Assurance Manager and Compliance Officer,  
Harry Krantz Company, LLC.

P: 516.471.1508  
F: 631.254.5451

[www.harrykrantz.com](http://www.harrykrantz.com) <<http://www.harrykrantz.com/>>

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**From:** RPD PublicComments  
**To:** HAJEN, RYAN; jwatts@bis.doc.gov; MILLER, ASHLEY  
**Date:** 3/25/2009 5:35:58 PM  
**Subject:** Fwd: Utilization Rate of Export Licenses Issued

**Comments on export license utilization rate notice** -- submitted by Paul Humphreys, Material Control Manager, Applied Technologies / Scientific Drilling Int'l.

>>> Paul Humphreys <phumphreys@ata-sd.com> 03/25/09 1:23 PM >>>  
From our own experience;

1) Readiness requirement.

In the oil services industry contracts are often won or lost on the service provider's ability to mobilize rapidly -- if you can have equipment on site next week, you've got the job. Therefore at the first promising sign of a possible offer of work in a controlled location we would apply for a license. Some contracts came through, some didn't, or we may be put on stand-by; but we had to have a license in place so that we were ready to go at a moment's notice should an offer materialize. Alternatively, we may be promised work and obtain a license in anticipation, then the promise does not materialize.

2) Ambiguity of rules.

Say two export-controlled oil well survey instruments are required on a job. If we apply for a license to export two instruments and ship serial numbers 101 and 102, then those two instruments are returned to the U.S. for repair and recalibration, can we only reship serial numbers 101 and 102 back to the licensed location? Does a license for two units mean ANY two as long as there were only two on location at a time, or just the specific two that are first shipped against the license? We cannot determine that from the regulations so we tend to err on the side of caution may apply for a license to export six, so that if 101 and 102 are out of service or in service in another location and are not available to go back under license, we have the option of selecting another two serial numbers. Sometimes the original two stay on location for the duration of the license and the remaining four on the license are not needed.

3) Expectation of increased work or market share.

We win a contract with major oil company in a location for which we require a license. We have a reasonable expectation that once they see how our equipment and people perform, they will expand our contract to service a second or third oil rig, requiring additional controlled equipment. We also have a reasonable expectation that once we have performed services for one company, then other majors in the area will also be prepared to engage us. We will apply for a license quantity in anticipation of increased demand for our services.

-----  
Paul Humphreys  
Material Control Manager  
Applied Technologies / Scientific Drilling Int'l  
805-239-9100 Ext. 534  
(Fax 805-227-7345)

**From:** RPD PublicComments  
**To:** HAJEN, RYAN; jwatts@bis.doc.gov; MILLER, ASHLEY  
**Date:** 3/25/2009 5:38:05 PM  
**Subject:** Fwd: Utilization Rate of Export Licenses Issued

**Comments on export license utilization rate notice** -- submitted by Thomas R. Dirmyer, Manager, Export - Import, Emerald Performance Materials, LLC.

>>> "Dirmyer, Thomas" <Thomas.Dirmyer@EmeraldMaterials.com> 03/25/09 12:11 PM >>>

We are pleased to offer some comment for your consideration. We have been obtaining licenses for the same material for at least 40 years as Emerald Performance Materials and predecessor companies Lubrizol, Noveon and BFGoodrich. Our product is covered by ECCN 1C111 and is a binder material for solid rocket propellant systems. As such we have a very small customer base who in all likelihood are better known to you and other US Government agencies than to us. Given the nature of our product, we are perhaps three or more times removed from the entity that would utilize the missile system. We have always felt it necessary to build in considerable lead time on our license applications to allow for various steps between our product being qualified for a particular system and the ultimate export of that product to our customer. We do overlap our licenses, although no more than we feel is necessary, to be able to offer an uninterrupted supply of product to our customers. Because this is a missile tech item, we anticipate the multi-agency reviews our applications undergo. And perhaps we are somewhat conditioned by the processing times we saw years ago as opposed to the processing times we have experienced more recently.

As to whether we seek a license before we receive an order, that would depend on whether the customer is an existing customer or a new one. We are more comfortable have a license in place with a new customer before going too far commercially. Our rationale is that they may not be as familiar with their role in the process and that could take some time. Also, should that new customer have a need for technical information on our product, we would want to have a license in place before transferring any controlled information. In the case of existing customers, we have those overlapping licenses so order timing is not a factor.

We are pleased to report we have never suffered any loss of sales as a direct result of the licensing process.

With respect to our particular licenses, the demand for our products has been down. While the sales figures are negatively impacted, one can take comfort in assuming there are fewer missiles be fired around the world.

I would be remiss if I did not applaud your collective work during the 30+ years of my involvement with the licensing process. BIS is a very helpful and professional organization to deal with.

Thomas R. Dirmyer  
Manager, Export - Import  
Emerald Performance Materials, LLC  
Cuyahoga Falls, OH

-----  
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**From:** RPD PublicComments  
**To:** HAJEN, RYAN; MILLER, ASHLEY; WATTS, JENNIFER  
**Date:** 3/30/2009 12:34:56 PM  
**Subject:** Fwd: Utilization Rate of Export Licenses Issued

**Comments on export license utilization rate notice** -- submitted by Martina Rogan (Manager, Import/Export and Order Mgmt.), LeCroy Corporation USA.

>>> <[Martina.Rogan@lecroy.com](mailto:Martina.Rogan@lecroy.com)> 03/30/09 12:07 PM >>>

To Whom It May Concern:

Our companies customers are experiencing financial hardship and are not purchasing capital equipment, as well as our competitors not needing licenses when selling their products

Best Regards  
Martina Rogan  
Manager Import/Export and Order Mgmt

LeCroy Corporation - USA  
700 Chestnut Ridge Road  
Chestnut Ridge, New York 10977  
Tel 845 578 6011  
Fax 856 578 5965

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**From:** RPD PublicComments  
**To:** HAJEN, RYAN; jwatts@bis.doc.gov; MILLER, ASHLEY  
**Date:** 4/27/2009 3:49:10 PM  
**Subject:** Fwd: Utilization Rate of Export Licenses Issued

**Comments on export license utilization rate notice** -- submitted by Brenda Tagliavia (Operations/Sales Support Manager), **SAFC Hitech Inc.**

>>> Brenda Tagliavia <Brenda.Tagliavia@sial.com> 4/27/2009 3:07 PM >>>  
I am aware of several reasons for larger quantities being requested on US Export Licenses that may not be used, which I've listed below:

Our industry is one that is somewhat unpredictable as far as whether a specific technology will work well in the field or not. All customers think that their particular 'process/product' will be 'the one' to make the 'big time'. In order for our customers to cover their requirements should their process take off, they order quantities that they believe will be used should full success/production occur.

Since our customers must have continuity of supply, they will often have more than 1 vendor qualified for materials in their process. If one vendor is unable to fully supply, they will be able to purchase from a secondary vendor without interruption of their production lines. This is critical to their business success.

Hopeful success at a potential account is another reason for license submission without usage. A sales rep may think they will get the business at an account and so they want everything in place should they get an award of business/contract. Sometimes, this doesn't work out.....

Respectfully submitted,

Brenda Tagliavia  
Operations/Sales Support Manager  
SAFC Hitech Inc.  
610-706-0606  
610-706-0888 fax

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**From:** RPD PublicComments  
**To:** jwatts@bis.doc.gov; MILLER, ASHLEY  
**Date:** 4/30/2009 4:11:49 PM  
**Subject:** Fwd: Utilization Rate of Export Licenses Issued

**Comments on export license utilization rate notice** -- submitted by Dennis Farrell (Global Export Compliance Mgr.), **Analog Devices, Inc.**

>>> "Farrell, Dennis" <Dennis.Farrell@analog.com> 4/30/2009 2:37 PM >>>  
Analog Devices, Inc.  
April 30, 2009  
3 Technology Drive  
Norwood, MA 02062

Utilization Rate Study  
Office of Technology Evaluation, Room 2705  
U.S. Department of Commerce  
14th Street and Pennsylvania Avenue, NW.,  
Washington, DC 20230.

Subject: Utilization Rate of Export Licenses Issued

To Whom It May Concern at BIS:

Analog Devices, Inc. is responding to the Federal Register Notice dated March 20, 2009 in which you are seeking public comments on the Utilization Rate of Export Licenses Issued by the Bureau of Industry and Security. We have broken down our comments into the sections requested in the Federal Register Notice:

Whether exporters seek an export license prior to receipt of a purchase order or letter of intent and examples of typical business cases for seeking a license absent such documentation

Reply: In many cases, we will submit an export license application to BIS in anticipation of a purchase order and/or upon receipt of a Letter of Intent from our customer. We estimate this happens in about 20-25% of the applications we submit to BIS. The primary reason for doing this is to satisfy a customer request (primarily originating from our Distributors) that we obtain assurance the license will be approved and product can be shipped to the ultimate consignee before our Distributor takes an order from their end user. It also enables our Distributors and their end users to plan upcoming projects more efficiently, gives them the satisfaction that their transaction has been approved for export and the assurance that product can begin moving immediately. We also do this to accommodate OEM customers, where no Distributors are involved, for the same reasons. Many times, our customers do not want to move ahead on planned projects, which incorporate our products into their end products, until they can be assured our products can be delivered. This is a very common practice in our industry. Our competitors have informed me they also use this practice of applying for a license prior to receipt of a Purchase Order or Letter of Intent.

Detailed information concerning instances when exporters have obtained



an export license from BIS but then did not use it or used it for less than the quantity or value authorized including information on whether the export licensing process impacted the transaction, whether sales were lost due to the licensing process and the dollar amount of any such lost sales that are directly attributable to the licensing process

Reply: There have been times when we have not fully utilized export licenses issued to our company. This does not happen often but it can and does occur for a number of reasons including, but not limited to, the following:

\* Manufacturing/production of our end customer's product was canceled and their product does not make it to market. Hence, they do not place orders on us for products we hold an approved license to export.

\* Our end customer's products make it to market but their sales are not as expected based on their initial demand for parts from us. As a result, demand for their product slows down and they stop placing orders on us or the order rate slows down. Since export licenses are only valid for a two year period, many times there are unused/unshipped items remaining on the approved license when it expires.

\* Our Distributor customer anticipated doing a large project with their end user but the end user's project was canceled after our export license was approved. This would result in no orders being placed on our company and a license that is totally not utilized.

\* Quantities of the same or like product become available in a non-US country, after a US export license has been approved by BIS, and our customer buys from the foreign country, where export restrictions may be less onerous or non-existent.

\* Our customers need to be assured of component availability very early in their purchasing cycle when reviewing supplier/vendor offerings and the design can be lost to competitors or fail in any number of ways before production volume hits. This can lead to placement of orders or letters of intent to more than one supplier to ensure export licenses are approved in plenty of time. If our company receives an approved BIS license and the customer picks another company (also holding an approved BIS license) as their vendor of choice, our license will not be utilized.

\* China is going to award TD-SCDMA infrastructure build outs for 15 cities, 100K base stations. Four (4) Chinese companies will all be bidding to supply the total build out. No one company would win all cities. At the end of the day Company A might get 7 cities, Company B might get 4, C and D split the rest. During the initial bidding the vendors would not know what percentage of the build out they would get. They would need to have licenses in place, however, to supply at least the majority of the systems. This would also result in situations where licenses for a number of items would be approved but our company may only supply 5 of the 10 items on a given license.

Information about whether licenses for the export of software or technology are not used or are under used

Reply: We do not usually submit applications for export controlled software products. Applications for technology transfers and/or deemed exports are fully utilized, according to the conditions on the licenses. If we stop using export licenses issued for technology transfers, it is

only because there has been a change in an employee's citizenship status, which allows them to be treated as a "U.S. Person" for export compliance purposes.

Whether an extension of the validity period of export licenses issued by BIS would increase the probability of the utilization of licenses

Reply: We believe extending the validity period of export licenses issued by BIS to 3 or 4 years (instead of the current 2 years) would increase the probability of more fully utilizing export licenses. Longer validity periods would help customers deal with the normal peaks and valleys of economic cycles where demand may be slow for a period of time, then increase again. Given this scenario, a license which is valid for 3 or 4 years would more likely be fully utilized than a license which is only valid for 2 years. If demand increases during years 3 and/or 4, the approved license can be utilized rather than going through another application and approval process for a new license.

Process improvements that BIS could make to enhance the utilization of export licenses (e.g., expedited treatment for applications under specific circumstances)

Reply: We would like to see the following process improvements made to the export licensing review process:

\* Institute a fast track review and approval process for license applications which cite precedent cases (same ultimate consignee, same products, same country of destination) where a license was approved within the past 2 years of submitting the current application. Many times, cases take 3 or 4 MONTHS to go through the interagency review process and this can have a serious impact on the sales cycle and revenue streams of US exporters. We understand the need to be compliant and operate according to the law but we also hope BIS can be more flexible in allowing our business to operate more efficiently and allow us to be more predictable when giving forecasts to the financial community.

\* Empower the BIS licensing officers to challenge interagency (DoD, State Dept, etc.) questions when they do not make logical or practical sense. For example, when considering the point above regarding license applications where precedent cases have been cited, we often get interagency questions passed on to us from the BIS licensing officers when we believe the Licensing Officer should challenge the validity of the interagency questions when the circumstances on the application are an exact match to an application approved within the past 2 years. We would like to see the BIS Licensing Officers feel empowered to "manage" the export licensing process and not just be a pass through for questions and answers between the agencies and the exporter.

\* Institute a process which enables the BIS Licensing Officers to be more responsive to exporter questions and requests. Many times our questions, e-mails, phone calls go unanswered for days or weeks and we have to follow up a second or third time with BIS. We believe BIS staff should be more responsive to our inquiries and, even in cases where the Licensing officer does not have the final answer, it is appropriate for

a communication from BIS providing the exporter with an updated status on their original request.

Thank you for giving us the opportunity to provide these comments. If you need further details or have further questions, please contact me.

Yours truly,

Dennis Farrell  
Global Export Compliance Mgr.  
Analog Devices, Inc.  
20 Cotton Road  
Nashua, NH 03063  
Phone: (603) 578-5219  
Mobile: (603) 566-6382  
[dennis.farrell@analog.com](mailto:dennis.farrell@analog.com)

**From:** RPD PublicComments  
**To:** jwatts@bis.doc.gov; MILLER, ASHLEY  
**Date:** 5/5/2009 11:28:55 AM  
**Subject:** Fwd: Utilization Rate of Export Licenses Issued Comments (IntelCorporation)

Attached are comments on the export license utilization rate notice -- submitted by Michelle Stout on behalf of **Jeff Rittener (Global Export Compliance Manager), Intel Corp.**

>>> "Stout, Michelle B" <[michelle.b.stout@intel.com](mailto:michelle.b.stout@intel.com)> 5/4/2009 12:00 PM >>>  
To Whom It May Concern,

Please see attached letter from Intel Corporation in response to BIS's March 20, 2009, request for public comments on the Utilization Rate of Export Licenses Issued (74 Fed. Reg. E9-6164).

Thank you.

Regards,

Michelle on behalf of Jeff Rittener

Michelle Buensuceso Stout  
Export Research & Trade Compliance Manager  
Intel Corporation | Global Tax and Trade  
[michelle.b.stout@intel.com](mailto:michelle.b.stout@intel.com) | 408.765.1199

Intel Corporation  
2200 Mission College Blvd.  
Santa Clara, CA 95054-1537



May 4, 2009

Ms. Jennifer Watts  
U.S. Department of Commerce  
Office of Technology Evaluation  
14th & Pennsylvania Avenue N.W., Room 2705  
Washington, DC 20230

**Re:** Request for Public Comments on Utilization Rate of Export Licenses Issued

Dear Sir or Madam,

Intel Corporation welcomes the opportunity to submit the following comments in response to the Commerce Department's Bureau of Industry and Security's (BIS's) March 20, 2009, request for public comments on Utilization Rate of Export Licenses Issued (74 Fed. Reg. E9-6164).

Intel submits export license applications to BIS in support of global intra-company activities that authorize the transfer of items to support substantial R&D, manufacturing, production and other operational activities (E.g. site ramp up, site closures, equipment purchases, spare replacements, etc.). Additionally, export licenses are considered necessary when Intel collaborates with other companies and/or sells or transfers items and assets to non-Intel facilities. This licensing activity typically applies to transfers of microprocessor technology, software, manufacturing equipment, spare parts, and other items. These export licenses are critically important to the functioning of Intel sales and operations abroad and can entail submission of vastly detailed information to BIS.

**Software or Technology Export Licenses**

As Intel collaborates with OEM's and ODM's to deliver robust product offerings for the small, medium and large business segments, there is a need to share intellectual property which may be considered controlled technology. Additionally, due to the 24x7x365 day nature of Intel's global collaborative R & D environment, the export licenses are used on a moment by moment basis during the validity period of the export licenses. For example, Intel uses the licenses every time there is an email sent, a meeting when technology is shared, a presentation or training session, etc.

### **Equipment or Spares Export Licenses**

Because Intel has a global manufacturing presence it is necessary to move equipment and spares from site to site. Intel also sells used manufacturing equipment, assembly test equipment, materials and assets to the secondary market. As asset sales are dependant on market demand, market availability, age of equipment, technology of equipment and the condition of equipment, sale closures are also contingent upon receipt of an approved export license from BIS.

These export license applications are submitted far in advance of the actual shipment date for the following reasons:

- To ensure there are no delays when items are ready to ship.
- Proactively obtain approval from BIS prior to confirming sale(s) with the secondary market.
- To provide enough time for review and negotiation of proposed conditions imposed on a given license (since they can be numerous, ranging from limitations on technology access, to specialized compliance procedures, to recordkeeping requirements).

In some cases, export license applications are submitted prior to receipt of a purchase order or letter of intent. For example, if Intel sells to an entity in China and a PRC End-User Statement is needed, obtaining the PRC End-User Statement from the PRC Ministry of Commerce could be a lengthy process. To avoid further delays in the licensing process, Intel believes submitting the export license application while simultaneously working on the PRC End-User Statement is most efficient. This process has worked well in the past, with the condition to submit the original PRC End-User Statement to BIS prior to exporting the licensed items.

### **Export License Usage**

There have been instances where Intel has obtained approved export licenses; however, the export licenses were not completely used to its full quantity and/or value for the following reasons:

- The export license expired resulting in a new export license.
- Estimated quantities and values were submitted based on forecast since the need to export replacement spare parts were unknown for the validity period of the license.
- Upgraded licenses were needed due to technology thresholds stated in license conditions.
- Export license application review took so long that an alternative option/solution was identified (E.g foreign made/supplied part)

### **Current Export License Process**

The transactional nature of the current export license application process is manageable however there are still many administrative burdens, operational delays and inconsistencies that impact Intel's global business objectives.

For example:

- Although the license applications are submitted specifically for authorization to transfer licensable items, BIS requests to review complete item lists destined to the end-user which also includes non-licensable items.
- The export license processing time is open-ended and we experience longer license approval times due to extensive and time-consuming negotiations of proposed conditions. Often the conditions that are presented are inapplicable, extra-regulatory or unrealistic.
- There is no specific communication regarding the status of licenses when additional information is needed from the applicant.
- STELA does not always provide accurate case status or specific information as to why the case is pending with a specific agency.
- Some export license applications result in detailed justification requirements and are sometimes escalated to the Operating Committee.

#### **Recommendations/Conclusions**

Intel has mitigated some of these encumbrances mentioned above by internal streamlining of license application routines, improved Intel efforts to familiarize licensing officials with Intel's business, increased use of automation, and other factors. Today, the overall impact is significantly lower due to the aforementioned efficiencies. Intel believes the current export license process could be improved to meaningfully increase the usage of export licenses issued.

Intel recommends the following improvements to the current regulatory process:

- Develop and implement an "Amendment Process" so that applicants can amend current licenses rather than submit a new export license application every time there's a minor change.
- Extend the validity period of export licenses issued by BIS from 2 years to 5 years.
- Develop a streamlined and consistent process among the agencies to ensure license conditions are reasonable, enforceable and appropriate.
- Need to ensure applicant receive and approve proposed license conditions prior to the export license being finalized to avoid restarting the application process due to administrative process errors.
- Eliminate start and stoppage time when reviewing export license cases by requiring government agencies to approve/deny export license cases within a 45 day timeframe with the assumption of approval after 45 calendar days.
- Standardize the list of required data elements needed with the application by not requiring a list of non-licensable items.

Intel recommends the following improvements to the current SNAP-R process:

- Status of the case as to when it has been routed and which agency is reviewing.
- Name of the assigned Licensing Officer.

- Immediate Case # assignment once the application is submitted instead of checking back the next couple of hours or day.
- Consistent notification of “Acknowledged” or “Approved” cases. SNAP-R does not consistently notify applicants when application status’ change.
- Communication via SNAP-R when BIS requests for additional information instead of requesting via email.
- Provide reporting capabilities.

The adoption of these improvements will increase the usage of export licenses issued. The recommended improvements would not diminish our current export license related compliance programs and, hence, should not present a security concern. In conclusion, Intel recognizes that any improved processes must address legitimate national security equities in the course of streamlining the export licensing process. We thank you for the opportunity to provide comments in response to the Notice of Inquiry.

Sincerely,

*Jeff Rittener*

Jeff Rittener  
Global Export Compliance Manager  
Intel Corporation  
408-765-1195



**From:** RPD PublicComments  
**To:** jwatts@bis.doc.gov; MILLER, ASHLEY  
**Date:** 5/5/2009 11:32:42 AM  
**Subject:** Fwd: Utilization Rate of Export Licenses issued

Attached are comments on the export license utilization rate notice -- submitted by **Norma Rein, Boeing Company**.

**P.S.:** I wasn't able to open the PDF attachment -- kept getting an error message. If you have the same problem, we may have to ask her to resubmit her comments in a new PDF document.

>>> "Rein, Norma B" <norma.b.rein@boeing.com> 5/4/2009 5:25 PM >>>

Attached please find Boeing comments on the referenced BIS Notice of Inquiry

Thank you for the opportunity to comment.

Norma Rein  
Boeing  
703-465-3655

>  
> \_\_\_\_\_  
> From: Harris, Sharay E  
> Sent: Monday, May 04, 2009 5:09 PM  
> To: Rein, Norma B  
> Subject: doc  
>  
> <<URS.pdf>>

The Boeing Company  
1200 Wilson Blvd.  
Arlington, VA 22209-1989

May 4, 2009

Utilization Rate Study  
Bureau of Industry and Security, RM 2705  
14<sup>th</sup> Street and Pennsylvania Ave, NW  
Washington, DC 20230



**Subject: Request for Public Comments on the Utilization Rate of Export Licenses Issued by the Bureau of Industry and Security**

Dear Sir or Madam:

The Boeing Company, hereinafter referred to as Boeing, welcomes this opportunity to engage in a discussion of unused or underused licenses. Below we provide information about why Boeing licenses obtained from BIS may go unused. Additionally, we provide recommendations on process improvements that would enhance the utilization of export licenses.

Boeing seeks to obtain only the necessary licenses to support our business. We develop license strategies for current aircraft programs, product development initiatives, and airline fleet support. We coordinate with the government as needed to ensure that our licenses are targeted and necessary. However, there are instances where we must obtain licenses that are not subsequently used. These are primarily in the areas of product development, which entail technology exports; and airline fleet support in sanctioned countries, which are for technology and commodities.

**New Product Development:**

In response to issues raised in the Federal Register notice, Boeing's experience is that technology export licenses are also unused. During the development of a new airplane program, for example, Boeing may need to source preliminary information from many suppliers. Often we seek to evaluate the technology of the foreign party, but must obtain licenses to engage in discussions where we might export U.S. technology. To avoid schedule disruptions, Boeing must seek 'just in case' licenses with a broader group of potential foreign suppliers than those with which we may eventually engage. In addition, licenses may not be used because Boeing needs or plans change and the foreign supplier is no longer of interest; for example, because license conditions narrowed the permitted export to specific aircraft or parts and the business need has broadened,

and/or because the foreign supplier objects to conditions, such as implementing a technology control plan, in which case Boeing never activates the license.

Although BIS defined 'underutilized licenses' in terms of value, in the product development technology realm we see 'underutilized/underused' licenses as those that were initially needed, but then fall away because discussions move into an unanticipated area that was not requested initially. This can arise due to the challenge of crafting an initial license request that is broad enough to enable early-stage discussions but specific enough to get U.S. government approval. Additionally licenses are underused because Boeing down-selects a few appropriate suppliers from the many identified for initial discussions.

To minimize unused and underused licenses Boeing suggests that:

- license requirements for major allied nations be narrowed to only those areas that are truly critical to national security; alternatively
- an exception be created for exports to these trading partners or that GBS be modified to allow license-free exports;
- non-U.S. availability of technology be given greater weight when imposing license requirements, as the foreign party we must license may have more sophisticated technology than Boeing in a specialty area;
- license conditions avoid restrictions to very narrow applications that result in seeking new licenses for the same ECCN and same party but for different parts or aircraft.

### **Airline Fleet Support in Sanctioned Countries**

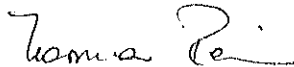
Due to the level of commitment that Boeing gives to the safe operation of its aircraft and the safety of airline customers, Boeing needs to be able to provide support when it is required regardless of location. Boeing has obtained approximately twenty licenses to provide support to aircraft in sanctioned countries in case of an "Aircraft on Ground" ("AOG") event or once an AOG event has occurred. These licenses are critical to have in place to support safety of flight operations, but most, thankfully, go unused because an AOG situation does not occur. Even when we get a post-AOG event license on a rush basis (two to seven days) the airline has often managed a solution without Boeing assistance. This presents safety concerns because it may cause the airline to get parts and technology from an unapproved source. Further, sanctioned country licenses have a one year validity period which means annual renewals of largely unused licenses.

To minimize these unused licenses Boeing suggests that:

- civil aircraft AOG support in sanctioned countries fall under a safety of flight exception with an immediate and/or post-event reporting requirement, rather than a license. AOG support is always the minimum necessary to return an aircraft to a safe and airworthy operational status to enable it to leave the sanctioned country for more thorough repairs. Almost without exception in these situations the sanctioned country has no access to U.S. hardware or technology which means that national security concerns are not present, yet civil aviation is captured by foreign policy considerations that should never trump safety of flight. Furthermore, the current requirements are not effective as evidenced by the existing grey market of spare parts and services which also imperils safety of flight; alternatively
- develop a better mechanism to expedite or facilitate civil AOG support licenses, such as combining many airline customers on one license or a process to designate the Original Equipment Manufacturer as a 'validated exporter' for these situations along the lines of a Validated End User;
- work with other agencies to eliminate dual agency licensing requirements;
- grant licenses for more than one year.

We believe that the changes recommended for the scenarios described above, which represent the environment in which Boeing must operate to develop, sell and support its aircraft would go a long way towards reducing the incidence of unused or underused licenses, without causing an adverse impact to national security or foreign policy considerations. We respectfully request that BIS give them serious consideration. Please do not hesitate to contact us if more data to substantiate our arguments is required.

Sincerely,



Norma Rein  
Senior Manager  
Global Licensing Compliance and Policy  
703-465-3655