



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 (SBEA)—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, SBEA 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 SBEA 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