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RE: Proposed Amendment to the International Traffic in Arms Regulations: Dual Nationals and Third-Country Nationals Employed by End-Users (Federal Register Doc 2010-19833, Public Notice 7116, RIN 1400–AC68)

IPC — Association Connecting Electronics Industries® appreciates the opportunity to comment on the Department of State’s (State Department) Proposed Amendment to the International Traffic in Arms Regulations: Dual Nationals and Third-Country Nationals Employed by End-Users (hereafter referred to as proposed amendment). IPC supports the State Department’s proposed changes in modifying ITAR prohibiting the transfer of technical data or defense services to a foreign person.¹ IPC agrees that this regulation imposes unnecessary administrative burdens on companies without commensurate gains in national security. In fact, we believe that once in effect, the proposed amendment will result in increased exports by U.S. electronics companies. However, IPC cautions that, as currently written, the eligibility definitions in the proposed amendment are unclear and therefore will be an obstacle to companies seeking to use the new export license exemption.² Furthermore, IPC is concerned with the change to ITAR that would permit an exemption to end-users that are granted a security clearance from a nation other than the U.S. IPC and the electronics industry welcome the proposed amendment to ITAR with the following changes: that the State Department 1) clarify the definition of an employee, 2) better define the screening requirements for a company, and 3) limit the exemption criteria for a non-U.S. citizen employee’s security clearance to only the U.S. government.

**IPC Members’ Wealth of Experience Manufacturing ITAR Regulated Items**

IPC is a global trade association representing all facets of the electronic interconnect industry. IPC has more than 2,700 member companies, 1,700 of which are located in the U.S. As a member-driven organization and leading source for industry standards, training, market research and public policy advocacy, IPC supports programs to meet the needs of an estimated $1.7 trillion global electronics industry.

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¹ 22 CFR Section 124.8
² Proposed New Section 126.18 under 22 CFR
IPC is well qualified to provide comments and suggestions to the proposed changes in ITAR. Many IPC members supply the military and are experienced with ITAR as part of their daily business. IPC’s standards, specifications, and guidelines developed for printed boards have replaced several U.S. military electronics standards. Nearly all tier-one military original equipment manufacturers (OEMs) are IPC members, active participants in standards development, and implement IPC standards in defense electronics. IPC and its members are also developing a “Best Industry Practices for Intellectual Property (IP) Protection” standard that will be used by printed board manufacturers. IPC’s special Department of Defense (DoD) Task Force, comprising senior level executives from leading North American printed board manufacturers and EMS companies that supply the DoD with products and technology, provides industry expertise to Congress and the DoD Office of Industrial Policy.

Current International Traffic in Arms Regulations Impose Unnecessary Burdens on Electronics Companies Creating Barriers to Global Trade

The current ITAR place a tremendous administrative burden on companies. Section 124.8 (5) ITAR, commonly referred to as a “deemed export” regulation, affects the intra-company operations of electronics companies employing dual and third-country nationals at all levels of employment. The global demands placed on electronics companies requires the employment of non-U.S. citizens with the talent to meet a company’s needs. Companies employing dual and third-country nationals view the administrative burden of deemed export regulations as a barrier to successful business in today’s economic environment. Unfortunately, this burden influences companies’ decisions not to produce electronics regulated by ITAR because it is easier to conduct business in the commercial sector.

Companies that employ dual and third country-nationals view “deemed export” regulations as a trade deterrent. The current export licensing process for ITAR regulated items is long and burdensome. In one example of a prolonged licensing adjudication, a company’s export license processing check expired before the Directorate of Defense Trade Controls (DDTC) began its adjudication of the license application. The lengthy licensing process slows down a company’s ability to conduct business in a timely and successful manner, ultimately impacting their ability and willingness to export.

Proposed Export Licensing Exemption Will Enable U.S. Electronics Companies to Increase Exports

U.S. electronics exports are likely to increase because the proposed amendment significantly reduces the administrative burden to do so. Providing an export licensing exemption will remove the period in which a company must wait for DDTC approval to transfer an ITAR controlled item, therefore increasing the speed in which a company can export and meet their customers’ needs.

The number of U.S. electronics companies manufacturing electronics regulated by ITAR should be a high concern to the U.S. government, especially the Department of Defense, as this represents their pool of qualified suppliers to choose from. The decision to manufacture an
electronics item regulated by ITAR is extremely complex. Administrative burdens place even more pressures on companies already dealing with the high demand of resources associated with manufacturing an electronics item regulated by ITAR. The manufacture of an ITAR regulated electronics item usually involves a high-level technology meeting a very specific need and requires companies to devote substantial resources. The administrative burdens imposed by ITAR further reduce a company’s ability to rapidly meet their customers’ needs resulting in potential lost sales. For these reasons, many companies have decided that it is not cost effective to work with ITAR regulated items.

**Proposed Export Licensing Exemption will Assist the Department of Defense in their Acquisition of Electronics Regulated by ITAR**

The proposed exemption is likely to increase the number of companies manufacturing electronics regulated by ITAR. Companies, once discouraged from manufacturing ITAR regulated items will undoubtedly re-evaluate producing items regulated by ITAR. Additionally, companies may elect to modify their dual-use items and technology to an article regulated by ITAR. Increasing the number of companies with the ability to meet ITAR requirements will assist the DoD in acquiring electronics meeting their specialized needs.

**Recommendations to Improve Proposed Amendment to International Traffic in Arms Regulations**

IPC recommends that the State Department clarify the definition of a “bona-fide employee,” better define the screening requirements imposed on companies, and limit the security clearance approval to only the U.S. government.

In proposed section 126.18(a), the State Department should clarify the definition of a “bona-fide employee” to be defined as a full-time or a part-time employee of the company being granted the exemption. The definition of a “bona-fide employee” should exclude employees who are temporary, provided by a temporary contract agency, or on a temporary consulting arrangement. The definition of a “bona-fide employee” should also exclude employees of subsidiary companies of the parent company receiving an exemption from export licensing.

In proposed section 126.18(c) (2), the State Department should better define company screening requirements for dual and third-country national employees. As currently written, the proposed exemption criterion for companies to “screen its employees for ‘substantive contacts’ with restricted or prohibited countries” is ambiguous. The terms “substantive contacts,” “recent or regular travel,” and “recent or continuing contact” should be clearly defined. Any ambiguity in the amendment’s screening requirements may result in interpretations that fall short of the State Department’s expectations or in companies choosing not to pursue the proposed export licensing exemption.

In proposed section 126.18 (c) (1) (i), the State Department should modify “security clearance that is approved by the host nation government for its employees.” IPC recommends limiting the exemption criteria for a non-U.S. citizen employee’s security clearance to only the U.S.
government. The State Department can ensure a high level of U.S. national security by limiting the proposed exemption criteria for security clearances to the U.S. government.

IPC believes the State Department can enhance the proposed amendment by implementing IPC’s recommendations. We believe the end result will be not only the relief of the administrative burden, but also an increase in the number of electronics companies pursuing the proposed export licensing exemption. Ultimately, the government will benefit by an increase in exports by U.S. electronics companies and an increased number of suppliers capable of meeting defense requirements.

**Conclusion**

IPC and the electronics industry welcome the proposed amendment to ITAR with the following changes: that the State Department 1) clarify the definition of an employee, 2) better define the screening requirements for a company, and 3) limit the exemption criteria for a non-U.S. citizen employee’s security clearance to only the U.S. government. The State Department’s proposed amendment to create a new exemption for companies employing dual-nationals or third-country nationals will assist electronics manufacturers producing items regulated by ITAR. IPC encourages the State Department to ensure that the proposed changes to ITAR maintain a high level of national security while removing administrative burdens with no commensurate gain in national security.

IPC appreciates the opportunity to comment on the proposed changes to ITAR. Please feel free to contact Ron Chamrin, IPC manager of government relations for additional information or further assistance at ronchamrin@ipc.org or +1 703-522-3964.

Sincerely,

Ron Chamrin
Manager, Government Relations