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## Compliance & International Trade Committee

The CITC is a committee formed by NEDA to bring together distributors and manufacturers for the exchange of ideas and information related to international trade.

The landscape of international trade has changed significantly during the last few years. Changes in trade regulations have increased the level of complexity. The global market has grown to become a significant part of our business. This requires all parties in the supply chain to increase their awareness of the regulations and become educated to avoid costly delays or legal problems.

This committee is a forum where questions regarding these regulations can be raised and different solutions discussed. Since manufacturers and distributors are part of the same supply chain, all bear a legal responsibility in the compliance to Federal Regulations.

***The goal of this committee is to propose to our industry standard procedures, forms, etc., that meet regulatory requirements.***

This will benefit the entire industry by reinforcing government confidence in this business sector's international compliance standards, as well as, facilitate business transactions with our customer's worldwide.

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## Proposed Rule Revisions and Clarification of Export/Re-export Controls for the People's Republic of China (PRC); New Authorization Validated End-User

(Federal Register 17 FR 38313 – July 6, 2006)

Department of Commerce

Bureau of Industry and Security

15 CFR Parts 740, 742, 744 and 748

**SUMMARY:** It is the policy of the United States Government to prevent exports that would make a material contribution to the military capability of the People's Republic of China (PRC), while facilitating U.S. exports to legitimate civil end-users in the PRC. Consistent with this policy, the Bureau of Industry and Security (BIS) proposes to amend the Export Administration Regulations (EAR) by revising and clarifying United States licensing requirements and licensing policy on exports and re-exports of goods and technology to the PRC.

The Proposed amendments include a revision to the licensing review policy for items controlled on the Commerce Control List (CCL) for reasons of national



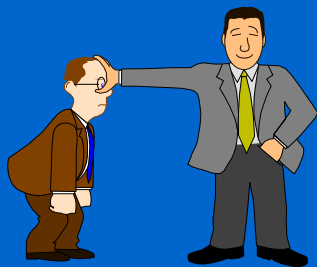
security, including a new control based on knowledge of a military end-use on exports to the PRC of certain CCL items that otherwise do not require a license to the PRC. The items subject to this license requirement will be set forth in a list. This rule further proposes to revise the licensing review policy for items controlled for reasons of chemical and biological proliferations, nuclear nonproliferation, and missile technology for export to the PRC, requiring that applications involving such items be reviewed in conjunction with the revised national security licensing policy.

This rule proposed the creation of a new authorization for validated end-users in certain destinations, including the PRC to whom certain, specified items may be exported or re-exported. Such validated end-users would be placed on a list in the EAR after review and approval by the United States Government.

Finally, this rule proposes to require exporters to obtain an End-User Certificate, issued by the PRC Ministry of Commerce, for all items that both require a license to the PRC for any reason and exceed a total value of \$5,000. The current PRC End-User Certificate applies only to items controlled for national security reasons. This rule also proposes to eliminate the current requirement that exporters submit PRC End-User Certificates to BIS with their license applications but provides that they must retain them for five years.

Link to download the entire proposed rule in a PDF format:

<http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/pdf/E6-10504.pdf>



**Our industry believes this proposed regulation for exports/re-exports to the PRC will be a Trade Barrier for U.S. companies...**

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Many industry associations and individual companies submitted comments to BIS concerning the anticipated negative impact of this regulation on U.S. companies both as an administrative burden and as a trade barrier in the following areas:

1. Product availability from Chinese, or third country, companies of the products represented by the 47 ECCNs subject to the new licensing requirements. It is widely believed that the PRC customers be able to readily get the parts from other than U.S. companies.
2. Internal costs related to (i) ascertaining whether the products exported will be used in a Chinese military end use, either by your customer, or your customer's customer, and (ii) lost sales to foreign competitors not burdened by similar restrictions.
3. Many companies believe the validated end user (VEU) proposal will not be useful to your company but will actually create a trade barrier both domestically and internationally. In addition, the administrative compliance burdens for a company would far outweigh any perceived benefits.

**The comments period closed on December 4, 2006. We will all anxiously await the reaction of BIS to the concerns addressed by our industry.**

## Ask the Expert - Larry Christensen, JPMorgan Chase Vastera



Ask the Expert:

Proposed Export /Re-export Controls to the PRC

### About the author

Larry E. Christensen is vice president of export controls for JPMorgan Chase Vastera and adjunct professor of law at Georgetown University Law Center. He has worked in export controls and trade sanctions since 1979. A 1972 graduate of Duke Law School, Mr. Christensen served the Department of Commerce for eleven years in the Office of Chief Counsel of Export Administration and as Director of the Office of Regulatory Policy. In that role, he headed the complete redrafting of the Export Administration Regulations (EAR) in 1995 - 1996, the first such rewrite since 1949. Mr. Christensen participates in the consulting practice and managed services offerings of JPMorgan Chase Vastera. He trains on virtually all US export control topics and certain elements of foreign export controls.

### QUESTIONS:

1. **Are U.S. exporting regulations changing in terms of trade with China?**
2. **What are the greatest areas of risk for the electronics industry?**
3. **How can our industry prepare for the implementation of this regulation?**
4. **What third party solutions are available to assist?**

### ANSWERS

#### **Are U.S. exporting regulations changing in terms of trade with China?**

The Bureau of Industry and Security (BIS) recently proposed amendments to the Export Administration Regulations (EAR) that would revise and clarify the United States' policy for exports and re-exports of dual-use items to the People's Republic of China (PRC). Specifically, the proposed rule states that it is the policy of the U.S. Government to prevent exports that would make a material contribution to the military capability of the PRC, while facilitating U.S. exports to legitimate civil end-users in the PRC. Consistent with this policy, BIS proposes to amend the EAR by revising and clarifying U.S. licensing requirements and licensing policy on exports and re-exports of goods and technology to the PRC.

The proposed amendments include a revision to the licensing review policy for items controlled on the Commerce Control List (CCL) for reasons of national security, including a new control based on knowledge of a military end-use on exports to the PRC of certain CCL items that otherwise do not require a license to the PRC. The items subject to this license requirement will be set forth in a list. This rule further proposes to revise the licensing review policy for items controlled for reasons of chemical and biological proliferation, nuclear nonproliferation, and missile technology for export to the PRC, requiring that applications involving such items be reviewed in conjunction with the revised national security licensing policy.

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issued by the PRC Ministry of Commerce, for all items that both require a license to the PRC for any reason and exceed a total value of \$5,000. The current PRC End-Use Certificate applies only to items controlled for national security reasons. This rule also proposes to eliminate the current requirement that exporters submit PRC End-User Certificates to BIS with their license applications but provides that they must retain them for five years.

### **What are the greatest areas of risk for the electronics industry?**

The Pentagon considers China to be the world's most sensitive export destination. The U.S. Government believes China is actively engaged in harvesting advanced technologies to further the capabilities of its military, thus the fear that any electronic item shipped to China may contribute to the military potential of the Peoples' Liberation Army.

Lack of compliance with export control regulations can result in significant civil and criminal fines and penalties, loss of trade privileges, and even imprisonment. You do not want an electronic item that you manufacture to wind up in the wrong hands and used for military purposes.

Some recent examples of firms that have been fined for violating export control regulations:

- 2006 - **The Boeing Company**, \$15 M Fine, ITAR controlled QRS-11 sensor used on Boeing commercial aircraft sold to China
- 2003 - **Hughes Electronics Corporation & Boeing Satellite Systems**, \$32 M Fine, ITAR violations for release of technology to and in China
- 2002 - **Loral**, \$14 M Fine (Q 4 Earnings impact - 4 cents per share), ITAR violation for release of technology to China and in China
- 2001- **McDonnell Douglas**, \$2.1 M Fine for violations of the EAR when exporting machine tools to China

**The "Ask the Expert" responses to the following questions are posted at <http://www.nedassoc.org/compliance.htm>**

1. **How can our industry prepare for the implementation of this regulation?**
2. **What third party solutions are available to assist?**

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### **Membership inquiries for Compliance & International Trade Committee (CITC), please contact:**

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