

Comments in response to Department of State Interim Final Rule “International Traffic in Arms Regulations: Consolidation and Restructuring of Purposes and Definitions”

Docket No. DOS-2022-0004; RIN 1400-AE27

Dated March 23, 2022

May 9, 2022

The National Customs Brokers and Freight Forwarders Association of America Inc. (“NCBFAA” or “Association”) submits the following comments in response to the Department of State (“DOS”) Interim Final Rule (“IFR”) published in the Federal Register on March 23, 2022. The IFR amends part 120 of the International Traffic in Arms Regulations (“ITAR”).

The NCBFAA, together with its more than 1,100 member companies, commends DOS’s efforts to update and more efficiently organize the ITAR. The Association’s members are comprised of the nation’s leading freight forwarders and customs brokers who are involved in a significant percentage of import and export shipments, including items subject to the ITAR.

The NCBFAA appreciates the opportunity to provide DOS with its comments with respect to IFR changes to ITAR sections § 120.13 Registration and Subpart C—Definitions.

I. § 120.13 Registration

Part 129 of the ITAR sets forth the registration and licensing requirements for persons engaged in the business of regulated brokering activities. Pursuant to §§ 129.2 and 129.3, freight forwarders and customs brokers are exempted from the requirement to register as brokers with the Directorate of Defense Trade Controls (“DDTC”) so long as they are exclusively in the business of financing, insuring, transporting, customs brokering, or freight forwarding, and the services they provide for items subject to the ITAR do not extend beyond financing, insuring, transporting, customs brokering, or freight forwarding.

The changes to § 120.13(b) of the ITAR currently include language relating to the registration requirement for those who engage in brokering activities. This section does not mention the exemptions available in Part 129, in contrast to the language in the IFR for § 120.14(c) which does reference the exemptions available in Part 129 if applicable.

The NCBFAA requests that the exemptions available in § 129.2 and § 129.3 be expressly mentioned in § 120.13(b) to make clearer and more apparent the potentially applicable exemption from registration for freight forwarders and customs brokers. Mentioning the available exemptions would also better harmonize the language in § 120.13(b) and § 120.14(c).

II. Subpart C—Definitions

The terms “end use” and “end user” are found many times throughout the ITAR. Understanding how DOS defines the terms used in the ITAR is imperative to complying with the ITAR’s requirements.

The NCBFAA recommends that the terms “end use” and “end user” be added to Subpart C—Definitions to provide a clear understanding of the ITAR sections that use either or both terms.

For reference, the Foreign Trade Regulations (15 CFR 30.1) defines the term “end user” as “The person abroad that receives and ultimately uses the exported or reexported items. The end user is not an authorized agent or intermediary, but may be the FPPI or ultimate consignee.” Similarly, the Export Administration Regulations (15 CFR 772.1) defines the term “end user” as “The person abroad that receives and ultimately uses the exported or reexported items. The end-user is not a forwarding agent or intermediary, but may be the purchaser or ultimate consignee.”

Additionally, the NCBFAA was hoping to see an alphabetical listing of definitions, although the Association does understand the logic that DOS applied to the organization and grouping of the terms.

This concludes the Association’s comments. The NCBFAA hopes that these comments assist Department of State with their update and re-organization of part 120 of the ITAR.

Respectfully Submitted,

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