

Before the
BUREAU OF INDUSTRY AND SECURITY
Washington, DC 20230

In the Matter of)
)
Authorization of Certain “Items” to Entities) Docket No. 220901-0180
on the Entity List in the Context of Specific)
Standards Activities)
)

COMMENTS OF THE TELECOMMUNICATIONS INDUSTRY ASSOCIATION

The Telecommunications Industry Association (“TIA”) appreciates the opportunity to provide further input regarding the Authorization of Certain “Items” to Entities on the Entity List in the Context of Specific Standards Activities.¹ As both an advocacy organization for trusted manufacturers of ICT equipment and a standards-setting body, TIA represents more than four hundred U.S. and global manufacturers and vendors of information and communications technology (“ICT”) equipment and services. TIA member companies design, produce, and sell equipment and services in countries around the world, and each company has a stake in international ICT standards development.

This revised Interim Final Rule effectively addresses the concerns raised by TIA and our members in past filings to the Bureau of Industry and Security. The record laid out by BIS in the Federal Register Notice is thorough and clear in its documentation of and responsiveness to concerns raised by industry in the docket, and the agency has gone above and beyond in ensuring that U.S. policy relating to standards and export controls both protects U.S. national security and

¹ Authorization of Certain “Items” to Entities on the Entity List in the Context of Specific Standards Activities, 87 FR 55241 (September 9, 2022) <https://www.federalregister.gov/documents/2022/09/09/2022-19415/authorization-of-certain-items-to-entities-on-the-entity-list-in-the-context-of-specific-standards>

ensures that U.S. companies can fully participate in and lead in settings standards around the world. We fully agree with the statement by BIS in the Notice that, “any impediment to U.S. influence in standards development forums is a national security threat to the United States because not only does it limit U.S. leadership in standards development, but other countries are already racing to fill this vacuum with their own leadership and standards.”²

TIA believes that **no further changes need to be made to the IFR in order to carry out the stated intent** of ensuring that “export controls and associated compliance concerns as they relate to the Entity List do not impede the leadership and participation of U.S. companies in national and international standards-related activities.”³ To the extent that there are minor clarifications that need to be made, they can likely be done through FAQs or other guidance. These include the three following areas:

1. Definition of Standards as Not Mandatory

With respect to the definition of “standards” in the context of a standards-related activity, there are some limited circumstances where compliance with a standard is mandatory, for example where a standard is incorporated by reference by a federal agency or sub-federal jurisdiction. At the time that the standard is being drafted, it may not be clear whether it will ultimately be incorporated by reference and made mandatory at the request of a government entity at the local, national, or international level. For example, OSHA requires compliance with a number of voluntary, consensus standards under the Occupational Safety and Health Act,⁴ the FCC references specific absorption rate (“SAR”) limits for devices operating within close

² Ibid.

³ Ibid.

⁴ §1926.6

proximity to the body as specified within ANSI/IEEE C95.1-1992,⁵ and TIA’s own ANSI/TIA-5050-2018 standard has been incorporated by reference by the FCC to evaluate hearing aid compatibility.⁶ However, these rare exceptions are unlikely to have a meaningful effect on U.S. participation, and the time between when a standard is released and the point at which the U.S. government makes it mandatory through incorporation by reference would likely ensure that those activities fall under the “standards activity” definition outlined in the IFR.

One could imagine another jurisdiction like China⁷ or the EU that more directly uses standards as *de facto* or *de jur* legal requirements potentially pushing out U.S. participants through legal ambiguity introduced by the participation of listed entities. Indeed, with respect to Europe specifically, industry has raised concerns regarding the European Commission’s stated intent to exclude non-EU companies from fully participating in standards development within the European Standardisation System, including by preventing companies from participating in decisions about adoption and finalization of harmonized standards that confer the presumption of compliance with essential requirements laid down in relevant legislation.⁸ The U.S. should avoid maintaining a legal standard that could be interpreted to exclude companies from participating in our own standards processes – setting aside that such processes are non-existent or nearly non-existent in our own system.

⁵ In the Matter of Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, ET Docket No. 93-62, (August 1, 1996) https://transition.fcc.gov/Bureaus/Engineering_Technology/Orders/1996/fcc96326.pdf

⁶ Standards for Hearing Aid-Compatible Handsets, 86 FR 23614 (May 4, 2022) <https://www.federalregister.gov/documents/2021/05/04/2021-08973/standards-for-hearing-aid-compatible-handsets>

⁷ China’s Cybersecurity Law, for example, references exclusionary cybersecurity standards developed by the government-managed body Technical Committee TC 260 which includes limited U.S. participation.

⁸ Nigel Cory, *How the EU Is Using Technology Standards as a Protectionist Tool In Its Quest for Cybersovereignty*, ITIF (September 19, 2022), <https://itif.org/publications/2022/09/19/how-the-eu-is-using-technology-standards-as-a-protectionist-tool/>

2. Definition of Published

BIS could also provide additional clarity with respect to how some standards development activities would fit within the definition of “published” as defined in 15 CFR 734.7.⁹ As scoped, it may not be clear whether the rule recognizes that some standards organizations require a party to be a member of an organization to receive standards in their final form. This could create uncertainty, as these requirements were not present in the previous rules which allowed for parties to engage with all standards documents in the context of a voluntary, consensus standards body whether they fit within the 15 CFR 734.7 definition or not. To the extent that BIS chooses to address this question in an FAQ, it could do so with a recognition that with such structures exist and that engagement with relevant documents in the conduct of standardization activities undertaken by these SDOs fall under the above authorization.

3. Clarification Regarding Already-Published Standards

As written, the IFR states that for there to be a qualified “standards-related activity” under the definition, there must be an “intent that the resulting standard will be “published.””¹⁰ By wording this in the future tense, the IFR may inadvertently exclude from the definition’s scope standards-related activities that occur in association with already-published standards. This issue is likely one of grammar rather than intent because BIS provided in the definition several examples of activities that occur in connection with already-published standards. These include conformity assessment efforts, “...adoption, or application of a standard...,” and “promulgating, revising, amending, reissuing, interpreting, implementing or otherwise maintaining or applying

⁹ § 734.7

¹⁰ Authorization of Certain “Items” to Entities on the Entity List in the Context of Specific Standards Activities, 87 FR 55241 (September 9, 2022) <https://www.federalregister.gov/documents/2022/09/09/2022-19415/authorization-of-certain-items-to-entities-on-the-entity-list-in-the-context-of-specific-standards>

such a standard.”¹¹ One cannot “promulgate,” “interpret” or “implement” a standard that does not yet exist. This likely inadvertent limitation could be addressed easily in the context of an FAQ.

Conclusion

Again, TIA appreciates the opportunity to provide comment on the Interim Final Rule. As revised, this rule ensures that U.S. industry has a seat at the table in international standards development, thereby supporting America’s economic interests, advancing the next generation of technologies, and enhancing U.S. national security. We look forward to working with the Commerce Department going forward to support robust U.S. participation in standards development activities around the world.

Signed:

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¹¹ Ibid.