

LEGAL GUIDES

**For the Conduction of Activities through ECIA's
Engineering/Technical Standards, GIPC, and
Statistical Committees**

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Legal Guidelines

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FOREWORD

In promoting these interests, ECIA engages in numerous activities conducted through its committees, task forces and other working groups. These activities are conducted under strict policies designed to promote and stimulate our free enterprise system and to make sure that laws for maintaining and preserving this system are vigorously followed. These guides constitute an important means for accomplishing this purpose and to assure that ECIA's legitimate objectives are achieved by lawful means.

These Guides reflect the best judgement of the standards of conduct and legal restraints which must be observed to protect against violations of the law. Experience has shown that questions and situations will arise from time to time which are not covered by these Guides but which nonetheless will require legal advice in order to make sure that the activity is legally proper and avoids embarrassment to ECIA and participating members. Such questions must be addressed in a timely and thorough manner.

These Guides are supplemental to existing ECIA policies regarding compliance with applicable federal, state and local laws of the United States of America. This document does not presume compliance with laws outside of the United States. All questions concerning the application or interpretation of these Guides should be referred to ECIA's General Counsel.

PART I: GENERAL GUIDES APPLICABLE TO ALL ECIA ACTIVITIES

This Part I includes general guides applicable to all ECIA activities. They are required to be read and followed by all members of ECIA and staff, Chairs and members of all committees, task forces, and other ECIA-sponsored groups.

Section A. IMPROPER ACTIVITIES AND PROGRAMS

ECIA activities or programs relating to any of the following subjects are improper and are not permitted:

(1) Restraint of Trade Agreements. The establishment of prices, production quotas, or uniformity of conduct, the allocation of customers or markets, standard terms or conditions of sale, boycotts, or other competitive restraints are improper activities. Therefore, any activities within, or in conjunction with, ECIA meetings relating to any of these matters are improper and committee Chairs, staff and participants should take affirmative action to assure that no such discussions are initiated or pursued.

(2) Prices and Pricing Policies. Any consideration or discussion of product prices or industry pricing policies is improper and therefore not permitted. This applies to all discussions and casual remarks relating to individual company prices, changes in prices, or general price levels whether involving formal or informal exchanges between participating representatives. Such discussions are not permitted and must be avoided.

(3) Terms and Conditions of Purchase and Sale. Any discussion at, or in conjunction with, ECIA meetings of terms and conditions of purchase and sale, including but not limited to warranty and warranty periods, discounts, allowances, or terms of credit, or the formulation of uniform or standard terms and conditions of purchase for sale, uniform basing points or zoning prices, or the recommendation thereof for voluntary use by the membership also is improper and is prohibited. It is usually proper, however, to discuss and propose comments and recommendations to Government agencies relating to general contract provisions, or modifications thereof, or other procurement practices or policies proposed or adopted by such agencies.

(4) Costs. Programs or activities involving the exchange of information relating to individual company costs of production or distribution and any formulas for computing such costs are improper. Discussions at ECIA meetings of industry costs are normally not permitted.

(5) Future Plans. Programs involving the exchange of company information relating to future plans affecting the design, research and development, production, and distribution or marketing of products are also improper. Any discussions at ECIA meetings relating to such programs are not permitted.

(6) Boycotting Customers or Products. Any activity involving the black-listing or boycotting of customers, competitors, suppliers, or others or establishment of patterns of uniform dealing is improper. Therefore, there shall be no activities relating to any form of boycotting or any activity which may be interpreted as such.

Section B. PROCEDURES FOR CONDUCTING ACTIVITIES

(1) Notices and Agendas. Notices and agendas for ECIA meetings shall be prepared in advance and distributed prior to the date of the meeting. Agendas shall not include any subjects which are stated as improper for consideration or discussion under the rules established in these Legal Guides. All agendas otherwise shall be in conformity with rules established by the General Counsel or shall be specifically approved by him. Whenever feasible, background information which would be helpful in the consideration of items on the agenda should be distributed in advance of meetings.

(2) Conduct of Meetings. All meetings shall be conducted in such a way as to assure ample opportunity and freedom in the exchange of ideas and an equal voice in all decisions. Committee Chairs and ECIA staff personnel shall make sure that all actions and discussions at meetings are kept within the bounds of proper ECIA activity. Committee Chairs should immediately rule out of order discussion deemed improper or questionable under the policies set forth herein until the propriety of such discussion has been determined by the General Counsel. If any doubt exists concerning the propriety of a program, either from a legal or policy point of view, it shall not become final or effective until after review by the General Counsel. Committee Chairs should follow the published agenda and not depart therefrom except for a good and legitimate reason, in which event the minutes should record the reasons for such departure.

(a) Voting in Committees. All Committees shall adopt rules consistent with these Guides to ensure that each company represented shall be entitled to vote in a manner which

will give equal weight to the vote of each company represented on the Committee, regardless of the number of representatives from any one company, if there should be more than one.

(3) Preparation and Review of Minutes. Minutes of all meetings shall be taken and recorded. Minutes shall include the time and place of the meeting, a list of all committee members and non-members attending, any additions or changes to the agenda, the disposition of each agenda item, and a record of all voting.

All minutes of meetings shall be approved by the General Counsel before distribution. Upon approval, they should be distributed to all members of the committee and any other ECIA members desiring or requesting copies.

PART II: SPECIAL GUIDES APPLICABLE TO ENGINEERING STANDARDIZATION PROGRAMS

This PART II contains legal policies applying specifically to the operations and conduct of all ECIA engineering standardization and related programs. It details the general policies of ECIA and supplements the procedures contained in the Standards and Technology Department "Manual of Organization and Procedure." In addition to the rules established in this PART II, all engineering standardization programs are required to be conducted in accordance with the rules set forth in PART I of these Legal Guides.

Section A. LIMITATIONS ON STANDARDIZATION PROGRAMS

ECIA standardization programs shall be confined to the formulation of standards within the rules set forth in this PART II defining or describing the dimension, quality, reliability, operating characteristics, performance, nomenclature, or any combination of these, and similar factors relating to electronics and related products, processes, systems, and procedures. These programs include not only those sponsored or initiated by ECIA and its members but also those recommended by Government agencies.

Section B. STATEMENT OF POLICY

The following statement of policy, reflecting the basic objectives of all standardization programs, shall be included in all ECIA standards:

ECIA engineering standards are designed to serve the public interest by eliminating misunderstandings between manufacturers and purchasers, facilitating interchangeability and improvement of products, and assisting the purchaser in selecting and obtaining with minimum delay the proper product for this particular need. Existence of such standards shall not in any respect preclude any member or non-member of ECIA from manufacturing or selling products not conforming to such standards.

Standards are proposed or adopted by ECIA without regard to whether their proposal or adoption may in any way involve patents on articles, materials, or processes. By such

action, ECIA does not assume any liability to any patent owner, nor does it assume any obligation whatever to parties adopting ECIA standards.

In all cases, however, specific requirements and restraints expressed elsewhere in these Guides must govern.

Section C. BASIC RULES FOR CONDUCTING PROGRAMS

All ECIA standardization programs shall be conducted in accordance with the following basic rules:

- (1) They shall be carried on in good faith under policies and procedures which will assure fairness and unrestricted participation;
- (2) Participation shall be extended to all technically qualified members of the industry, including representatives of user groups where appropriate, irrespective of membership in ECIA;
- (3) Each program shall be shown to serve one or more of the public interest objectives as provided in Section D of this PART II;
- (4) They shall not involve any agreement, expressed or implied, to adhere, or require adherence to a standard or the use of any coercion, directly or indirectly, with respect thereto;
- (5) They shall not be proposed for or indirectly result in effectuation of a price fixing arrangement, facilitating price uniformity or stabilization, restricting competition, giving a competitive advantage to any manufacturer, excluding competitors from the market, limiting or otherwise curtailing production, or reducing product variations except where required to meet one or more of the objectives set forth in section D of this PART II; and
- (6) Personnel participating in such programs as the representatives of members of the industry should be technical personnel who shall not have primary responsibility for marketing or for management of marketing personnel.

Section D. SELECTING A PROGRAM

All standardization programs must be shown to serve a legitimate public interest objective and that objective should be specifically stated in the context of the standard. To assure this, the program should relate to the achievement of one or more of the following objectives:

- (1) Promotion of interchangeability or improvement of products;
- (2) Elimination of misunderstandings or confusion between manufacturers and buyers with respect to the products;
- (3) Providing assistance to the purchaser in selecting and obtaining with minimum delay a suitable product for his particular need; or
- (4) Serve a declared governmental or public interest.

Section E. NOTICE OF MEETINGS

Advance notice shall be given to all participating representatives as to the matter to be considered for standardization and the nature of the action being contemplated. Procedures should provide reasonable means for making available all data, specifications, and other technical information relating to a product proposed for standardization to all persons participating in or contributing to the program involved irrespective of their membership in ECIA. Committee activities should be limited to discussions of the engineering and technical aspects of standardization or the procedures relating thereto.

Section F. SPECIAL RULES FOR CONDUCTING STANDARDIZATION PROGRAMS

(1) Voluntary Adherence to Standards. Adherence to standards shall be entirely voluntary and within the discretion of individual manufacturers. Any agreement, expressed or implied, or any coercion, direct or indirect, to adhere or to require or compel adherence to a standard is not permitted.

(2) Engineering and Technical Considerations. All standardization activity shall be confined to the technical and engineering considerations in the establishment of a standard and these considerations shall relate to one of the legitimate objectives as provided in Section D of this PART II.

(3) Commercial Standards. Standardization relating to the commercial aspects of products, such as conditions or terms defining commercial relationships between manufacturer and buyer with respect to engineering standards is not permitted. This type of standardization activity, involving bargaining among manufacturers, distributors or dealers, and including but not limited to matters of uniform warranties, conditions of acceptance and rejection, and terms or conditions of transaction is the proper concern of each interested company acting individually and is not a proper ECIA activity. (See Section A(3), PART I of these Guides).

(4) Standards Involving Quality or Performance. Generally, standards relating to quality or performance of products should not specify or describe the characteristics of such products in terms of maximum quality or maximum performance. This does not preclude standards stated in terms of maximum or minimum-maximum characteristics which are prescribed for the sole purpose of indicating that the product meets certain limited requirements and is designed to serve limited technical functions and purposes. Such standards generally involve product differentiation as distinguished from product quality. Standards may include suggested specific AQL's (Acceptable Quality Level) for guidance purposes with the actual AQL to be agreed upon between the manufacturers and the user, or include ranges of AQL's for the same purpose.

(5) Revision of Standards. Any revision of an existing standard shall conform to the same procedures and policies applicable to the initiation of the original standard. Such revision should be clearly justified as to legitimacy of objective and that objective should be stated in the revision.

(6) Interpretation of Standards. The interpretation of standards, insofar as it may relate to a specific product or manufacturer, is a proper matter for individual company concern

and should not be undertaken by ECIA staff members or any person acting in the capacity of an ECIA committee member. ECIA staff comments, if any, shall be limited to an explanation or clarification of technical language or provisions in a standard but not related to its application to specific products or manufacturers.

(7) Acceptability of Standards. All proposed standards recommended by ECIA engineering committees or task groups shall be submitted for final review and approval to industry members in accordance with the ECIA Standards and Technology Department's Manual of Organization. No standard shall be recommended for adoption unless it receives substantial industry acceptance.

(8) Final Adoption. Final adoption of proposed standards shall be in accordance with the Standards and Technology Department's "Manual of Organization and Procedure." In the process of adopting a standard, consideration shall be given to all comments of industry and user interests where applicable irrespective of ECIA membership, and if there is substantial opposition to the adoption of a proposed standard, the program involving such standard should be abandoned or referred to an appropriate committee or task group for further consideration.

Section G. PROCEDURES FOR COMMENTING ON MILITARY SPECIFICATIONS AND PRODUCTS

In offering comments or recommendations to elements of the DOD on Military standardization documents, the following procedures shall be followed:

(1) Participation shall be unrestricted and extended to all companies which have made known their interest regardless of membership in ECIA or on the cognizant committee or committees;

(2) Adequate notice of meetings shall be given all committee members and all other companies or representatives known to have an interest and shall include all issues to be discussed;

(3) Comments and recommendations shall be offered merely as such, limited to the technical aspects of the specifications, and shall reflect any divergency of views among those participating;

(4) Copies of comments and recommendations shall be sent to all company representatives known to have an interest;

(5) All submissions to military departments shall contain a statement that the comments and recommendations reflect only the views of the group participating; and

(6) They shall be reviewed and submitted by ECIA staff in accordance with the established procedures.

PART III: SPECIAL GUIDES APPLICABLE TO MARKETING DATA/STATISTICAL REPORTING PROGRAMS

This PART III sets forth specific rules for conducting marketing data/statistical programs by the ECIA. In addition to the rules established in this PART III, all marketing data/statistical programs are subject also to the rules set forth in PART I of these Guides.

Section A. SELECTION AND APPROVAL OF PROGRAM

All new marketing data/statistical programs shall be subject to legal review and approval of the General Counsel prior to adoption. No program shall be undertaken involving the collection and reporting of data relating to activities, programs, or purposes which are not permitted in PART I of these Guides.

A recommended program involving the collection, dissemination, and distribution of marketing/statistical data, should be evaluated carefully before it is put into effect to assure it achieves a legitimate objective by proper means. Generally, it shall be a program designed to provide participating members with information determined to be useful in producing more intelligent competition based upon increased knowledge of market conditions. A marketing data/statistical program shall not be conducted for purposes designed to stabilize or fix prices, divide or limit markets among program participants, control production, or otherwise restrict competition.

Section B. REPORTING DATA ON COMPLETED AND FUTURE TRANSACTIONS

ECIA marketing data/statistical programs involving the submission of individual company data shall be confined to the reporting of completed transactions in past periods and in aggregated form. Programs for the collection and reporting of summary data involving estimated of individual company future production or sales or purchases are not permitted. Moreover, no program for the collection and reporting by companies of their industry-wide estimates of future production or sales is to be permitted unless its usefulness is clearly justified as serving a proper business purpose and the program is specifically approved by the General Counsel.

Section C. COMPILATION AND DISTRIBUTION OF DATA

Information in individual company reports shall be kept in complete confidence by the originator and involved ECIA staff. The collection and compilation shall be performed only by designated staff and contractors hired by ECIA. Individual company reports and working papers must remain confidentiality. Under no circumstances may the reports or the information therein be divulged to anyone other than the designated staff and/or contractors except in the form of the official summary report released to the public, members and industry participants under established procedures. Each individual company report destroyed within a reasonable time after verification and consolidation.

In compiling data for reporting purposes, no report of data should be released when less than three companies have participated. Reports involving participation by three companies or more, under circumstances in which the report of one company shows it exceeds fifty per cent of the total, shall not be released unless permission is obtained of the company reporting in excess of such fifty per cent. Also, no report shall be distributed in which individual company figures can be identified either directly or indirectly.

Section D. RULES FOR PARTICIPATION

Participation in marketing data/statistical programs shall be extended to all members of the industry regardless of ECIA membership. Whether members or non-members should be charged for defraying the expenses of conducting a program is a question of policy. However, any such charges should bear a reasonable relationship to the total costs of conducting the program and fairly represent a proportionate share of such costs allocable to the participant.

Decisions to participate in marketing data/statistical programs shall be left entirely within the discretion of individual companies. While participation may be encouraged, there should be no threats or coercion, directly or indirectly, to force eligible industry members to participate.

Section E. POLICING REPORTS

Reports of participating companies should not be questioned by ECIA staff except for purposes of clarification or for correcting apparent mistakes in reporting. There shall be no activity directed at policing the accuracy of individual reports through staff audits of participating company books or other similar means.

Section F. DISTRIBUTION OF REPORTS

Marketing/statistical reports may be distributed to all members of the industry participating in the program involved regardless of ECIA membership. They also shall be made available to any other persons having a legitimate interest therein. Copies of all reports may be distributed to the U.S. Department of Commerce, Federal Communications Commission, the Federal Reserve Board, and to any other agency of Federal or State Government requesting such reports.

Marketing/statistical information also shall be published in news releases at such intervals as deemed desirable and appropriate.

All published reports to industry participants shall contain the following statement:

Caution: This report is published by ECIA as a service to the electronics industry and is distributed to participants for their individual company use. The specific data contained in any report shall not be the subject of discussion with other members of the industry either within or outside committee meetings. Any use of this information by members of the industry as part of an agreement or other undertaking in restraint of trade, either expressed or implied, is not authorized.

Section G. ADHERENCE TO REPORTS

There shall be no activity directed at suggesting or requiring adherence to any action or policy in the light of reported data. There also shall be no coercion by ECIA or its staff, or by members of the industry suggesting or requiring such adherence.

Section H. DISCUSSIONS AT MEETINGS

Discussions of marketing/statistical data at committee meetings shall be limited to the propriety of recommending or continuing a particular program, the format or design of a report, the procedure for developing the data therefor, and the general rules for conducting the program. There shall be no discussions of individual company data. Any discussions of reported information shall be permitted only in a general abstract sense and limited to industry-wide data as they relate to the over-all health and economic condition of the industry. There shall be no discussions with respect to any published data leading to any understandings in restraint of trade, expressed or implied, nor shall there be any discussions relating to the use of such data for forecasting or predicting future trends. There shall be no discussion whatsoever of prices or pricing practices or other terms or conditions of distribution or sale.

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