

January 8, 2012

To: DDTCResponseTeam@state.gov
Publiccomments@bis.doc.gov

From: Bill Root, waroot23@gmail.com, tel. 301 987 6418

Subject: ITAR Amendments - Category VI RIN 1400-AC99
EAR Revisions - Control of Vessels of War and Related Articles RIN 0694-AF42

General Comments:

The following observations apply not only to ITAR Category VI and related EAR 600 series ECCNs but also to other Categories, including recent proposed rules for Categories VII, VIII, XIX, and XX and related EAR 600 series ECCNs.

“Military Use”: Commendable progress has been made in substituting technical descriptions for “military use” and other similar words, such as “military applications”, “military mission”, or for “defense articles.” Such expressions are inherently ambiguous, whether or not modified by “specially designed” or other non-technical terms, such as “specifically designed or modified” or “directly related.” See below for specific recommendations to complete this process for Category VI and ECCNs 8x609.

“Specially Designed”: The December 2010 and July 2011 proposed definitions of “specially designed” omit designer intent. The original intent of the designer is usually unknown and the designer’s intent could change over time. However, designer intent is the usual meaning of “specially designed” and of other similar words, such as “specifically designed”, “specially designed or modified”, “designed or modified”, “designed”, “special”, “specialized”, or “specific.” Moreover, no definition of “specially designed” (or of these other words) could cover all their diverse uses throughout the USML and CCL (*e.g.*, to identify the controlled portion of something or the uncontrolled portion of something; to limit controls to a stated end-use or end-user; or to identify which components of an end-item are controlled or which components of a component are controlled). It is, therefore, recommended that “specially designed” (and other similar words) be completely deleted from the USML, the CCL, and corresponding multilateral lists and, where applicable, be replaced with other more precise expressions.

Some USML end-items now proposed to be modified by “specially designed” are already otherwise sufficiently described that simple deletion of “specially designed” would be desirable. This would avoid unintended implications that there were non-specially designed versions which are not controlled. If such an implication were intended, a few more technical words to exclude what is not controlled would clarify that intention.

Specific recommendations below to replace “specially designed” with “required” assume that the EAR definition of “required” would be revised to cover commodities as well as technology and software and that the Wassenaar definition would be revised to cover

commodities and software in addition to technology. “Required” is more restrictive than the unique interpretation of “specially designed,” which appears in many U.S. and multilateral historical documents and in current missile technology controls. “Required” is a better term to describe the original purpose of “specially designed” components, namely, to avoid defeating the purpose of the embargo.

To control situations in which no components of a munitions production installation would be “required,” it is recommended that U.S. controls include the following from Wassenaar Munitions List (WML) 22.b.1:

Technology “required” for the design of, the assembly of components into, and the operation, maintenance and repair of, complete production installations for items specified by the Munitions List, even if the components of such production installations are not specified.

Inclusion of trivial items in the list of “specially designed components” of USML end items in ECCN 8A609.y.1-13 indicates an intent that virtually all components of USML end items be controlled. Controlling individual components of little if any military significance would not be necessary to avoid defeating the purpose of the embargo. However, if there were no components “required” for a USML end-item, the purpose of the embargo could be defeated by exporting all the components and assembling them into the end-item. It is, therefore, recommended that only “required” components of USML end-items be controlled individually but that U.S. and Wassenaar controls include:

Technology “required” for the assembly of components into USML end-items even if the components of such end-items are not specified.

“Defense services,” as defined in 22 CFR 120.9(a)(1), include assembly of defense articles. If all components of defense article end-items are construed also to be defense articles, this definition of defense services would cover assembly of components into USML end-items. In that case, and assuming applicability of defense service controls to the EAR administration of 600 series components, there would be no need for the above recommended control on technology to assemble uncontrolled components into USML end-items. However, there would be a major needless cost in terms of controls on countless individual components of little if any significance.

Parts: The July 2011 proposed definition of “specially designed” would exclude what ITAR 121.8(d) defines as a “part.” It is, therefore, recommended that all mention of parts in Category VI or ECCNs 8x609 be deleted.

“Accessories and Attachments”: The ITAR 121.8(c) definition of these words notes that they are “not necessary” for the operation of an end-item, component, or system. The examples given are separately controlled (riflescopes in I.f and special paints in XIII.g). Therefore, it is recommended that all mention of accessories, attachments, and associated equipment in Category VI and ECCNs 8x609 be deleted.

Components of components: Controlling components of components is generally questionable.

Materials: There are currently no materials listed in USML Category VI (or Categories VII, VIII, or XX). Structural materials in XIII.f and ablative materials in IV.f are ambiguously controlled because of their relationship to defense articles, with no technical specifications. Existing ECCNs on the CCL control materials with technical detail based on potential military applications. It is, therefore, recommended that materials be controlled on the USML or in 600 series ECCNs only if manufactured to the point of being recognized as USML components (as described in proposed Note 1 to 8A609.x).

Technical data: Existing and/or proposed Category VI (and Categories VII, VIII, XIX, and XX) ambiguously control technical data directly related to defense articles. Production software and technology should be controlled by the same agency which controls production equipment, *i.e.*, Commerce. The definitions of “development” and “production” overlap. “Development” includes all stages prior to serial production; but “production” includes all production stages. Both terms include assembly and testing.

USML and CCL descriptions in other sections of ITAR: Category VI (and Categories VII, VIII, and XX) proposals would revive sections 121.15 (and 121.3, 121.4 and 121.14) to include definitions and other descriptions needed to understand the scope of USML or CCL controls. It is recommended that these sections be deleted and the substance be moved to the respective control lists.

Wassenaar and IAEA: These proposed rules should not become final, or even interim final, until reviewed by multilateral regimes to which the United States is committed. Historically, the United States has benefitted from considering differing allied technical views. The United States has also been reasonably criticized on those infrequent occasions when it has acted unilaterally in ways which others perceived to be benefitting U.S. exporters. Such might be the case by some substitutions of technical descriptions for specially designed.

Specific Recommendations to Revise Proposed Category VI and ECCNs 8x609

VI heading after “Vessels of War” insert “whether or not developmental, demilitarized, decommissioned, production, inventory, manned or unmanned, U.S.- or foreign origin”; before “naval equipment” delete “special”

VI.a change “(see Sec. 121.15 of this subchapter)” to “(battleships, aircraft carriers, destroyers, frigates, cruisers, corvettes, littoral combat ships, mine sweepers, mine hunters, mine countermeasure ships, dock landing ships, amphibious assault ships, or Coast Guard Cutters with U.S. designations WHEC, WMEC, WMSL, or WPB or equivalent)”

VI.b before “vessels” insert “surface”; change “(See Sec. 121.15 of this subchapter)” to “, as follows:

1. high-speed air cushion vessels for transporting cargo and personnel ship-to-shore and across a beach with a payload over 25 tons;
2. integrated with nuclear propulsion systems;

3. armed or serving as a platform to deliver munitions or otherwise destroy or incapacitate targets by firing lasers, launching torpedoes, rockets, or missiles, or firing munitions greater than .50 caliber;
4. Incorporating mission systems to provide electronic warfare, target designation, surveillance, target detection, or sensor capabilities.”

In VI.c change “specially designed” to “developmental”; delete “parts,”; delete “, accessories and attachments”

In VI.e delete “special”

Revise VI.f heading to read: Components, as follows:

In VI.f.1 delete “specially designed”

In VI.f.4 delete , and parts and components “specially designed” therefor

In VI.f.5 delete , and parts and components “specially designed” therefor

In VI.f.7 change specifically developed, designed, or modified to “required”

In VI.f.8 delete components, parts, accessories, attachments, and; delete “specially designed”

In VI.f.9 delete active protective systems (i.e., delete) and parts and components “specially designed” therefor

In VI.f.10 delete and parts and components “specially designed” therefor

In VI.f Note 1 delete Parts,; delete , accessories and attachments “specially designed”; change under ECCN 8A609 to or the NRC

In VI.f Note 2 delete also

Revise VI.g to read:

Software “required” for installation, operation, maintenance, repair, overhaul, or refurbishing of VI.a,b,c,e,f and software portion of .g; and

Technology “required” for installation, operation, maintenance, repair, overhaul, or refurbishing of VI.a,b,c,e,f, and software portion of .g.

Delete 121.15

8A609 Unit delete parts,; delete ,accessories and attachments

8A609 Related Controls (1) delete special (twice); change “technical data (including software) and services directly related thereto” to “software and technology ”required” for installation,

operation, maintenance, repair, overhaul, or refurbishing of such vessels and equipment or for such software”

8A609 Related Controls (4) before gas turbine engines delete military; before ECCN 9A619 insert USML Category XIX, ECCN 9A002, or; delete (as published on December 6, 2011, at 76 FR 76072, in a separate proposed rule that addresses gas turbine engines for military vehicles, vessels of war, and aircraft)

Revise 8A609.a to read Surface vessels of war, not enumerated in the USML, as follows:

- 1 underway replenishment ships;
- 2 surface vessel and submarine tender and repair ships;
- 3 non-submersible submarine rescue ships;
- 4 auxiliaries AGDS, AGF, AGOR, AGOS, AH, AP, ARL, AVB, AVM, and AVT;
- 5 armored, unarmed, amphibious craft;
- 6 unarmored, unarmed coastal, roadstead, and Coast Guard and other patrol craft with mounts or hard points for firearms of .50 caliber or less.

Delete 8A609.a Note

In 8A609.x delete “Parts,”; delete , “accessories and attachments”; change “specially designed” to “required”; change 8A609 to 8A609.a

In 8A609.x Note 2 first sentence delete “”Parts,”; delete , “accessories and attachments”; change VI(g) to VI(f)

Delete 8A609.x Note 2 second sentence

Delete 8A609.y, 8B609.y, 8C609, 8D609.y, and 8E609.y and all references elsewhere to these ECCNs

In 8B609 heading delete and related commodities; change “specially designed” to “required”; before , as follows insert and components “required” therefor

Revise 8B609 items to read The list of items controlled is contained in the ECCN heading.

Revise 8D609 heading to read:

Software “required” for development or production of VI.a,b,c,e,f and software portion of .g; and software “required” for development, production, installation, operation, maintenance, repair, overhaul, or refurbishing of 8A609, 8B609, or 8D609

In 8D609 Related Controls (1) change directly related to “required” for installation, operation, maintenance, repair, overhaul, or refurbishing of

Revise 8D609 items to read: The list of items controlled is contained in the ECCN heading.

Revise 8E609 heading to read: Technology for surface vessels of war, as follows:

In 8E609 Related Controls (1) change directly related to “required” for installation, operation, maintenance, repair, overhaul, or refurbishing of

Revise 8E609 items to read

- a. technology “required” for development or production of VI.a,b,c,e,f and software portion of .g;
- b. technology “required” for development, production, installation, operation, maintenance, repair, overhaul, or refurbishing of 8A609, 8B609, or 8D609;
- c. technology “required” for the design of, the assembly of components into, and the operation, maintenance and repair of, complete production installations for VI.a,b,c,e,f and software portion of .g, 8A609, 8B609, or 8D609, even if the components of such production installations are not specified; and
- d. technology “required” for the assembly of components into VI.a,b,c,e,f and software portion of .g, 8A609, 8B609, or 8D609 end-items, even if the components of such end-items are not specified.

Recommended Category VI portion of Wassenaar proposal

Revise surface vessel portions of WML 9 to conform with proposed Category VI plus 8A609.a.5 and related portions of 8A609.x revised as recommended above (this assumes the improbability of multilateral agreement on recommended 8A609.a.1,2,3,4,6)

Revise WML 16 to conform with Note 1 to 8A609.x

In WML 18.a change “specially designed or modified” to “required” and change “specially designed” to “required”

In WML 18.b change “specially designed” to “required” (twice)

In WML 21.a change “specially designed or modified” to “required”

Add to WML 22.b:

6. Technology “required” for the assembly of components into WML end-items even if the components of such end-items are not specified.

Revise Wassenaar definition of “required” to include commodities and software as well as technology

Recommended Category VI portion of IAEA Trigger List or Nuclear Supplier Group proposal

Changes to conform with proposed Category VI.e and f.7 revised per above recommendations.



February 3, 2012

U.S. Department of State
Charles B. Shotwell
Office of Defense Trade Controls Policy
2401 E Street, NW
Washington, DC 20037

Subject: RIN 1400-AC99 - Category VI Rule Comments

Dear Mr. Shotwell:

Huntington Ingalls Industries, Inc. (HII) welcomes the opportunity to provide the following inputs to Federal Register Notice of Proposed Rule, dated December 23, 2011.

HII appreciates the efforts of the Department of State in clarifying coverage of surface vessels in the proposed Category VI. In general, the proposed changes will move several of our licensing vehicles to the Department of Commerce and allow for more efficient processing of hardware shipment exceptions. However, greater analysis will be required on a case-by-case basis for technical exchanges and assistance when involving foreign parties and products that exist on ECCN 8A609 which will ultimately be installed on a USML controlled Category VI vessel.

Changes to § 121.1 Category VI – Surface Vessels of War and Special Naval Equipment

Paragraph VI(b)

HII believes the proposed language in this paragraph is confusing and unnecessary and we recommend that it be deleted (RESERVED). The composition of the revised Category VI places all the controlled vessels into paragraphs (a) and (c). Paragraph (a) refers to §121.15 for additional explanation of the types of vessels it is covering. Paragraph (c) covers development vessels. By including references to §121.15 in Paragraph (b), it is confusing to ascertain which vessels DDTC is referring to, if any, as all the vessels listed in §121.15 are already captured in paragraph (a). HII believes it is the intent of the proposed language to have VI(b) focus on §121.15(b) which points to those vessels controlled under the EAR and ECCN 8A609. Accordingly, HII believes that proposed paragraph (b) is not only unnecessary, but it blurs the bright line already established by §121.15.

Paragraph VI(e)

HII suggests that both non-land and land prototypes should be controlled by this paragraph. Thus, we respectfully request the deletion of “land” from the proposed language.

Paragraph VI(f)(1)

HII respectfully requests clarification on the definition of “hulls” and “superstructures”. That is, do “hulls” and “superstructure” refer to the exterior shell only of the vessel? Does this definition exclude the support structure? If the support structure is meant to be captured, where is the line drawn? Additionally, the proposed language leads one to believe that only the completed hull or superstructure is covered. The final rule should address coverage of steel plates and unfinished sections of the hulls and superstructures.

Paragraph VI(f)(3)

HII respectfully requests that the means to calculate the defined 12.5% damage threshold be published in the rule.

Paragraph VI(g)

HII respectfully requests the inclusion of language in this paragraph to cross-reference §125.1(e), which clarifies that technical data related to VI(e) and VI(f)(7) is not controlled by the Department of State.

If you have any questions regarding these comments, please contact me at (228) 935-0518 or at sandra.cross@hii-co.com.

Sincerely,



Sandra R Cross
Corporate Director, International Trade Compliance
Huntington Ingalls Industries, Inc.



DRS Technologies, Inc.
Trade & Security Compliance Office
2345 Crystal City Drive
Arlington, VA 22202

February 6, 2012

Mr. Robert S. Kovac
Managing Director
PM/DDTC, SA-1, Room 1200
Directorate of Defense Trade Controls
Bureau of Political Military Affairs
U.S. Department of State
Washington, DC 20522-0112

Subject: Response to the Proposed Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Category VI - 76 FR 80302, RIN 1400-AC99

Dear Mr. Kovac:

DRS Technologies, Inc. is fully supportive of the U.S. Government efforts to reform the regulations and systems for controlling exports. As a 10,000+ employee company with products and customers in both the international commercial and defense markets, we are very familiar with the current export control systems. The reforms are much needed to help the U.S. export control apparatus stay in step with the ever evolving and changing global markets and national security climates.

Creation of a revised U.S. Munitions List ("USML") based on positive criteria is critical to the success of the reform effort. The positive criteria put forth should be based on the unique military capabilities of an end-item, which is essentially their ability to operate in unique ways in hostile environments. Once defined, the end-item positive criteria would become the positive criteria for determining the level of control for lower level articles included in the complete defense article. The controls for every component, piece, part, software, or technology cited for control should have traceability through the positive criteria directly to the capabilities listed in the end-item as the reason for control.

To the maximum extent possible, a positive list should be void of the jurisdictional ambiguity that stems from the use of the term "specially designed." If there are no definitive, identifiable positive criteria directly traceable from a part or component to the unique military capability and end item, then those items should not be subject to control under the International Traffic in Arms Regulations ("ITAR"). Subjective catch all phrases such as "specially designed" are counter to the definition of a positive criteria list and exacerbate the lack of clarity that already exists within the USML.

A second factor to consider in the development of these positive lists is the worldwide commercial market. If end-items, parts, or components are available in the commercial market, the positive criteria should be reviewed for validity and necessity of ITAR control.

The proposed rule revising USML Category VI is a positive step towards the above with the goal of eliminating from ITAR control many common, every-day items which in no way contribute to the unique military capability of defense articles. There are several areas within Category VI, discussed in more detail below, that cause some confusion regarding export jurisdiction.

Specific Comments on VI-Surface Vessels of War and Special Naval Equipment

1. Category VI(a) and (b) proposes to control all vessels listed in §121.15, including all decommissioned and demilitarized warships. There is not cutoff date for the ships manufacture, construction material, or other positive criteria. Therefore, as written this definition includes such historic ships as the U.S.S. Constitution, the 214 year-old sailing vessel anchored in Boston Harbor. The U.S.S. Constitution is a revolutionary war era frigate that has been decommissioned and demilitarized. Per the above it is still a defense article. We recommend the addition of criteria stating such vessels manufacture prior to a certain date (ex. 1940) only be considered defense articles if they have integrated into them weapons, fire control systems, radars, or surveillance/reconnaissance systems specified in other USML categories.
2. Category VI(c) proposes to control all “developmental vessels and “specially designed” parts, components, accessories, and attachments therefore, developed under a contract with the U.S. Department of Defense.” The only positive criteria required for it to be considered a defense article is that it be a developmental vessel developed under a DoD contract. As such, regardless of the type of vessel being developed, it would be ITAR controlled, along with all specially designed parts, components, etc. We recommend the addition of such positive criteria as developmental vessels either specified in §121.15 or significantly similar to those specified in §121.15 rather than any developmental vessel the DoD may be funding. Additionally, we recommend the removal of “developed under a contract with the U.S. Department of Defense.” The funding source should not be a factor in deciding export control jurisdiction. If the item is a developmental vessel of the type specified in §121.15, it should be controlled as a defense article. The source of the developmental funds should be immaterial.
3. Category VI(c) states that all specially designed parts, components, accessories, and attachments are controlled as defense articles. As written this will control all specially designed items on the developmental vessel, regardless of the vessel or the parts being of a military nature. Specially designed has not yet been defined, making it difficult to assess the impact here. Additionally, there is no positive criteria beyond specially designed such limiting these parts, components, accessories, and attachments to the items specified in category VI(f), which lists the limited parts, components, accessories, and attachments to be controlled as defense articles. We recommend this section be amended to limit the specially designed parts, components, accessories, and attachments to items listed in VI(f)(1) through VI(f)(11).

4. Category VI(f)(4) proposes to control all propulsion and supporting auxiliary, control, and monitoring systems that store, create, distribute, conserve, transfer, and use energy outside propulsion system boundaries exceeding 30MJ storage, discharge less than 3 seconds and cycle time under 45 seconds, and parts and components “specially designed” therefore. We are a bit confused by this entry. It appears to attempt to control propulsion systems that provide energy outside of the propulsion system, if the energy provided exceeds 30MJ, can discharge in less than 3 seconds, and have a cycle time less than 45 seconds. The energy storage, discharge, and cycle times appear to be criteria associated with directed energy weapons. The vessel propulsion system, simply provides energy (presumably electricity in this case). If the energy storage capacity, discharge time, and cycle time are the salient criteria here, we recommend this entry be moved to Category XVIII and specified as a component of directed energy weapons. If the entry remains in Category VI, we recommend it be further defined to clarify what is to be controlled given that as written it could control an entire vessel electrical system (e.g. lighting, sailor consumption, general ship power (e.g. galley, hanger bay, etc.)) as a defense article.

Specific comments on §121.15, Surface vessels of war and special naval equipment

1. §121.15(a) captures all surface vessels of war be they in production, in inventory, decommissioned, or demilitarized. There is no sunset date on their manufacture for them to no longer be considered a defense article. As previously stated, the impact of this is every such vessel ever manufactured is still considered a defense article. We recommend the inclusion of a cutoff date for vessel manufacture to ensure that vessels such as decommissioned and demilitarized historic sailing ships are not captured here unless they have integrated into them weapons, fire control systems, radars, or surveillance/reconnaissance systems specified in other USML categories.

2. §121.15(a)(2) states that foreign-origin vessels “specially designed” to provide functions equivalent to those vessels listed in (a)(1) are considered surface vessels of war. This entry is problematic in that although the vessels in (a)(1) are specified, the “functions” of those vessels are not. The general role and mission objective of various vessels in (a)(1) might be discernable, for example an aircraft carrier. But, that aircraft carrier performs many “functions,” including humanitarian assistance. As written then, §121.15(a)(2) would appear to capture vessels specifically designed to perform humanitarian assistance functions. We recommend this entry be deleted. Vessels of war are specified in §121.15(a)(1). This entry does not appear to be required and adds confusion to the proposed rule.

3. §121.15(a)(6) states that any vessel that incorporates any “mission systems” controlled under this subchapter are also controlled. This includes such things as providing military communication. Any vessel then, with a military radio installed in it would be itself considered a category VI controlled surface vessel of war. The functions cited in §121.15(a)(6) all involve articles that are themselves controlled elsewhere in the USML. Trying to discern what constitutes “incorporated,” and what constitutes a “military function” add complexity and vagueness. As these military items will remain controlled under other USML categories, we recommend that §121.15(a)(6) be deleted.

Specific comments on Specially Designed

The term “specially designed” is used 8 times in the proposed revision to category VI and three times in the proposed revision to §121.15. The success of this proposed revision will obviously be very dependent on this definition. The proposed definition put forth in the December 2010 ANPRM (75 FR 76935) provided the requirement that to be considered specially designed an item must have properties distinguishing it for certain predetermined purposes and that it relate directly to the functioning of the defense article. Subsequent versions of specially designed have not included this clear line and we strongly urge the Department to adopt the above definition. If that is not possible, we would recommend that for any definition there be separate criteria for parts, components, accessories, and attachments rather than lumping these four distinct groups into one and where the criteria for that groups is simply form, fit, and function. Parts are different than components and should be treated differently. A part’s uniqueness is based on its form and fit given its design is based on specific limitations of the higher level item it is designed to fit into. The design of a component is not necessarily form and fit dependent on the item it will be associated with, it is more function dependent. For a part to be considered specially designed its form and fit should be the salient criteria whereas for a component it should require a unique function to the item it will be associated with for it to be considered specially designed. Attachments and associated equipment should be removed from the specially designed discussion. Attachments and associated equipment are outside the defense articles themselves. As such, they should be enumerated items on the USML.

As we stated earlier, these reforms are much needed to help the U.S. export control apparatus stay in step with the ever evolving and changing global markets and national security climates. Moving to a positive criteria list, based on the unique military capabilities of an end-item, will do much to remove unnecessary export license applications from the system and allow companies with truly commercial products to compete in the global market. The above methodology will help to create a positive USML that will effectively support both government and industry while enhancing national security.

Should you have any questions in this matter or require additional information, please contact Mr. Greg Hill at (703) 412-0288, ghill@drs.com.

Sincerely,



Heather C. Sears
Vice President, Trade & Security Compliance
& Associate Corporate Counsel
DRS Technologies, Inc.

BAE Systems, Inc.
1300 North 17th Street, Suite 1400
Arlington, VA 22209

BAE SYSTEMS

February 6, 2012

Sent via courier and via email to DDTCTeam@state.gov

Candace Goforth
Acting Director, Office of Defense Trade Controls Policy
Directorate of Defense Trade Controls
U.S. Department of State
SA-1, 12th Floor
Washington, D.C. 20522-0112

Attention: RIN 1400–AC99, ITAR Amendment—Category VI

Re: Federal Register / Vol. 76, No. 247- Amendment to the International Traffic
in Arms Regulations: Revision of U.S. Munitions List Category VI

Dear Ms Goforth:

BAE Systems, Inc. would like to thank the Department of State (DOS) for the opportunity to comment on this proposed rule reflecting the ITAR amendment that would revise U.S. Munitions List Category VI. BAE Systems fully supports the Administration's objectives of the Export Control Reform initiative.

After reviewing the proposed amendment, we believe there is an unintended consequence regarding revised §121.15(a)(6), which defines the scope of the ITAR to include vessels that incorporate any "mission systems" controlled under this subchapter. "Mission systems" are defined as "systems" (see §121.8(g) of the ITAR) that perform specific military functions such as by providing military communication, electronic warfare, target designation, surveillance target detection, or sensor capabilities.

The non-combatant support vessels that are now proposed to fall under the EAR, such as supply vessels, all contain devices that enable communication with other military units, both ship to ship and secure satellite communications. This unfortunately leads to the reinstatement of all non-combatant vessels to the USML under Category VI, pursuant to §121.15(a)(6) due to the vessels' communication suite and thereby negating any gains under the Export Control Reform effort.

To further implement a principal goal of export reform by controlling only those items that clearly affect the national security or foreign policy of the United States, a subparagraph could be added to §121.15(a)(6) as follows:

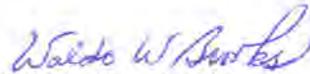
(6) Incorporate any “mission systems” controlled under this subchapter. “Mission systems” are defined as “systems” (see § 121.8(g) of this subchapter) that perform specific military functions such as by providing military communication, electronic warfare, target designation, surveillance, target detection, or sensor capabilities.

(i) **Unless such mission system can be physically secured and isolated from the remainder of vessel. (emphasis added)**

As an alternative, a more tailored approach may be to provide a clearer definition of the military communication systems that would still remain under the jurisdiction of the ITAR. The definition should be crafted using an objective standard that allows the military communications system to be aligned into a positive list.

On behalf of BAE Systems, I would like to thank the Department of State for the opportunity to offer comments in response to this Federal Register Notice and hope that the input provided is useful in advancing the Administration’s export control reform initiative. Should you have any questions about our submission, or if we can be of assistance to your efforts in any way, please contact me at 703-907-8241 or chip.brooks@baesystems.com.

Sincerely,



Waldo W. Brooks
Associate General Counsel, Export Control
BAE Systems, Inc.



February 6, 2012

Directorate of Defense Trade Controls
Office of Defense Trade Controls Policy
Department of State
VIA EMAIL: DDTCResponseTeam@state.gov

Re: Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Category VI (Federal Register Docket ID. 2011-32865, RIN 1400-AC99)

IPC — Association Connecting Electronics Industries welcomes the opportunity to comment on the proposed revision of United States Munitions List (“USML”) Category VI as detailed by the Department of State’s Federal Register notice. As an organization with a long history of cooperation with and support of the agencies that develop and implement national security policy, IPC shares the Department of State’s concern that the proposed rule ensures appropriate USML coverage and fully protects U.S. national security.

In December 2011, IPC submitted extensive comments to the State Department in response to proposed revisions of USML Category VIII. In this submission, IPC recommended that the Directorate of Defense Trade Controls (“DDTC”) clarify in a final Category VIII rule the treatment of printed boards, ensuring that a printed board’s designs and digital instructions be subject to the USML when the end item for which the printed circuit board is designed is identified on the USML. In making its case, IPC provided a diverse selection of examples to illustrate the highly sensitive and important role of printed boards in military electronics.

The concerns and recommendations that IPC detailed in its December 2011 comments parallel those IPC has with regard to the Department of State’s Category VI revisions. IPC believes it is important that the Category VI rule – and similar USML/CCL rules developed in the future – ensure clear treatment of printed boards and their designs as the DDTC transitions certain parts, components, accessories, and attachments from the USML to the Commerce Control List (“CCL”). Specifically, the rules should make clear that the design instructions (known as “digital data” in the industry) for printed circuit boards will remain under International Traffic in Arms Regulation (“ITAR”) control when the end item for which the board was designed is included on the USML. This clarification would ensure appropriate USML coverage and protect national security by controlling important technical data about ITAR controlled items.

These comments provide a concise response to the State Department’s Category VI revisions. IPC has attached its comments to Category VIII as well, and it urges DDTC to reference this lengthier explanation of IPC’s position concerning export control reform. IPC also intends to comment on any proposed rule that DDTC publishes regarding Category XI.

I. About IPC

IPC is a U.S.-headquartered global trade association, representing all facets of the electronic interconnect industry, including design, printed board manufacturing and printed board assembly. IPC has more than 3,000 member companies of which 1,900 members are located in the United States. IPC is the definitive authority on standards used by the global electronics industry and is the leading source for training, market research and public policy advocacy and other programs to meet the needs of an estimated \$1.7 trillion global electronics industry.

II. National security importance of printed circuit boards and designs

Specialized printed board and printed board assemblies are custom-made and uniquely designed for the specific function of the electronic items in which they are incorporated. Drawing upon very precise specifications for the design and placement of parts, a printed board contains a roadmap for the operation of that item. Manufacture of the printed board, then, requires access to and use of all of the board's design information. This access exposes a significant portion of the intellectual property for both the printed board and the item for which it is uniquely designed. Companies with access to the designs of printed boards for defense articles thereby also have access to sensitive information about controlled technologies.

Printed circuit boards and their designs, in fact, hold valuable and specific information about the workings of the underlying defense articles that make up USML Category VI. Following are a few examples of printed board designs that convey technical data regarding Category VI items for which the printed board was designed:

- **Shipboard radar including Aegis AN/SPY-1 D (V) on DDG 51 and CG 47-** The *Aegis* System was designed as a total weapon system, from detection to kill. The heart of the system is the AN/SPY-1, an advanced, automatic detect and track, multi-function phased-array radar. This high powered radar is able to perform search, track and missile guidance functions simultaneously with a multiple-target track capacity. Radar is a primary sensor and is a long-range, rapid scan, and multi-functional system. The latest radar technology involves phased array antenna, which is composed of several thousand transmit/receive modules, circulators, radiators and manifolds assembled into sub-arrays and integrated into a complete array. The baseline design uses many different types of RF & Microwave assemblies that consist of many different printed boards. The intellectual property of the assemblies, i.e. the instructions as to how to integrate these modules into a functioning radar system, resides primarily in the design of the printed board. Understanding the printed board design can compromise the radar system.
- **Ballistic Missile Defense Program** - Missile defense technology being developed, tested and deployed by the United States is designed to counter ballistic missiles of all ranges—short, medium, intermediate and long. Since ballistic missiles have different ranges,

speeds, size and performance characteristics, the Ballistic Missile Defense System is an integrated, “layered” architecture that provides multiple opportunities to destroy missiles and their warheads before they can reach their targets. The system’s architecture includes:

- Networked sensors and ground- and sea-based radars for target detection and tracking;
- Ground- and sea-based interceptor missiles for destroying a ballistic missile using either the force of a direct collision, called “hit-to-kill” technology, or an explosive blast fragmentation warhead;
- Command, control, battle management, and communications network providing the warfighter with the needed links between the sensors and interceptor missiles.

The Aegis Ballistic Missile Defense Program consists of the SPY-1 radar system, the Mk-99 and SPG-62 Fire Control System, and the Kill Assessment System. The MK-99 Fire Control System uses printed circuit boards as well as crystal oscillators to determine frequency. The Kill Assessment System has multiple RF and printed circuit boards which impart general system knowledge. This knowledge can be used to disrupt both the radar system and the kill assessment system, resulting in the failure of the missile defense system to achieve its purpose.

- **SQQ 89 Combat System** - The AN/SQQ-89(V) Anti-Submarine Warfare / Undersea Warfare Combat System (ASWCS / USWCS) provides surface warships with a seamlessly integrated undersea/anti-submarine warfare detection, localization, classification and targeting capability. The system presents an integrated picture of the tactical situation by receiving, combining and processing active and passive sensor data from a hull-mounted array, towed array and sonobuoys. The AN/SQQ-89(V) is integrated with the Aegis combat system and provides a full range of Undersea Warfare (USW) functions including active and passive sensors, underwater fire control, on board trainer and highly-evolved display subsystem. The system has been deployed on the *Oliver Hazard Perry* (FFG 7) class frigates, *Arleigh Burke* (DDG 51) class destroyers, and *Ticonderoga* (CG 47) class cruisers.
- **Standard Missile (SM2)** - Missile tracking systems guide the missile to its intended target and interact with shipboard controls. Knowledge of the printed circuit board design can expose the communications and operation frequencies, enabling the mission to be interrupted or compromised.

Failure to properly secure the information embedded in printed boards that are custom-designed for defense articles could result in a breach of national security, theft of critical defense-related intellectual property and allow for reverse engineering of our critical defense systems.

III. Current Rule

Under the current ITAR, printed circuit boards designed for gas turbine engines covered by ITAR are generally within the scope of the USML’s controls on “components” that are

specifically designed or modified for defense articles. Their printed board designs are also controlled by Category VI(g) and/or Category XI (Military Electronics), because they reveal technical data regarding both the printed boards and the ultimate defense articles into which the printed boards are installed. IPC understands the treatment of printed boards under ITAR to be unequivocal, but the Association has longstanding concerns that current law is frequently misunderstood, leading to preventable ITAR violations. IPC maintains that greater clarity about the controls on printed boards is necessary to protect national security.

IV. Proposed Rule

Under the proposed rule, it is unclear whether printed boards would be transferred to the jurisdiction of the CCL. The proposed rule generally transfers to the CCL all components specifically designed for surface vessels of war and special naval equipment, but as IPC noted in its Category VIII comments, printed boards may be considered as “technical data” related to the defense articles into which they are incorporated. IPC recommends that DDTC clarify the proper treatment of printed boards, to ensure that the industry understands the U.S. government’s position regarding the proper export control jurisdiction of these important products.

If printed boards themselves are retained on the USML as “technical data” in physical form, then printed board designs necessarily must be retained on the USML as well. They convey the same information, just in a different format. Even if DDTC determines that printed boards for defense articles are not subject to USML jurisdiction, however, DDTC should determine that printed board designs are subject to the USML as “technical data” as they convey technical data regarding the defense items into which printed boards are incorporated. Control of printed circuit board digital data and related designs, in short, should follow the categorization of the end item itself, whether or not the physical printed circuit board remains an ITAR controlled item.

V. Recommendation

Given confusion over the treatment of printed boards under ITAR, IPC contends that DDTC clarify the status of printed board designs in its final rule regarding Category VI. For instance, DDTC could state the following in the Final Rule when it responds to public comments:

One commenter requested that DDTC confirm that the design and digital instructions for printed circuit boards specifically designed for surface vessels of war and other Category VI items are “technical data” within the meaning of Category VI(g). DDTC confirms that these designs and digital data fall within the standard definition of “technical data,” to the extent that they contain technical data directly relating to Category VI items. Accordingly, such printed board designs and digital instructions are subject to the USML when the end item for which the printed circuit board is designed is identified in Category VI.

IPC seeks similar clarification for printed boards in other USML categories, although IPC recognizes that there could be a number of additional ways to address this issue. DDTC

may wish to amend the definition of “technical data” in 22 C.F.R. §120.10, to clarify this point. Another approach would be to address the issue clearly in Category XI (Military Electronics), to explicitly cover all printed board designs related to defense articles.

VI. Conclusion

IPC supports the State Department’s goal of reforming the USML to clearly describe what items it covers. However, in order to prevent the unintentional release of detailed design information about these items, the State Department should clarify that printed circuit board designs remain under the jurisdiction of ITAR when the end item for which the board is designed is a USML item.

The issue of printed circuit board designs is not unique to the Category VI. Every category of USML items includes the technical data directly related to those items.¹ These printed circuit board designs and digital data constitute technical data relating to the various end-items and USML components identified in each category because they contain information required for the design, development, manufacture, etc. of those defense articles.

Accordingly, IPC recommends that DDTC clarify the status of printed board designs in its final rule regarding Category VI and has suggested one approach in Section V. Further, IPC recommends that DDTC consider the issue of printed circuit board designs in the context of its ongoing revision of the USML, through steps such as (1) clarifying the scope of technical data in each USML Category, noting that printed board design coverage follows the coverage of the end item itself, (2) amending the definition of “technical data” in 22 C.F.R. §120.10, to clarify this point across all categories, and (3) clarifying Category XI to refer expressly to printed board designs for defense articles.

Thank you again for the opportunity to comment on the proposed amendments to USML Category VI. If IPC can offer additional information or assistance, please contact me at AnthonyHilvers@ipc.org or 847-597-2837.

Sincerely,



Anthony Hilvers
Vice President, Industry Programs

¹ See 22 C.F.R. § 121.1 Category I(i), II(k), III(e), IV(i), V(h), VI(g), VII(h), IX(e), X(e), XI(d), XII(f), XIII(l), XIV(m), XV(f), XVI(e), XVII(a), XVIII(f), XX(d), XXI(b).

February 06, 2012

Steven C. Rice
Deputy Director, Office of Defense Trade Controls Policy
Directorate of Defense Trade Controls
PM/DDTC, SA-1, 12th Floor
Bureau of Political Military Affairs
U.S. Department of State
Washington, D.C. 20522-0112
DDTCResponseTeam@state.gov

Attn: ITAR Amendments—Category VI, Vessels of War and Special Naval Equipment

Re: Amendment to the International Traffic in Arms Regulations: Revisions to the U.S. Munitions List Category VI (76 Fed. Reg. 80302, December 23, 2011)

Dear Mr. Rice:

United Technologies Corporation (“UTC”)¹ appreciates the opportunity to submit these comments on the United States (U.S.) Department of State’s proposed rule to amend the International Traffic in Arms Regulations (“ITAR”) to revise the United States Munitions List (USML) Category VI – Vessels of War and Special Naval Equipment. The proposed rule would revise Category VI to establish a clearer line between the USML and the Commerce Control List (CCL) regarding controls over surface vessels of war and special naval equipment, moving surface vessel parts, components, accessories and attachments to the CCL, and moving submarines and related parts, components, accessories, attachments and related equipment to Category XX. More specifically, the proposed revision narrows the type of surface vessels of war and special naval equipment controlled on the USML to only those that warrant control under the stringent requirements of the Arms Export Control Act and the ITAR.

As stated in our comments on other recent proposed rule changes, UTC strongly endorses the Administration’s Export Control Reform Initiative, and its stated goal of

¹ UTC is a global, diversified corporation based in Hartford, Connecticut, supplying a broad range of high technology products and services to the aerospace, power generation, security, transportation, and building systems industries. UTC’s companies are industry leaders, among them Hamilton Sundstrand aerospace and industrial systems; Pratt & Whitney aircraft engines, space propulsion systems and industrial turbines; Sikorsky helicopters; Carrier heating, air conditioning and refrigeration systems; Otis elevators and escalators; UTC Fire & Security electronic security and fire safety systems; and UTC Power fuel cell and power systems.

strengthening national security and the competitiveness of key U.S. manufacturing and technology sectors by focusing on current threats and the changing technological landscape. Of paramount importance in achieving this goal is reforming both the USML and the CCL², and aligning associated export licensing policies, to achieve a more positive, transparent and predictable structure that concentrates munitions and dual-use export controls on the most sensitive items. The reform and alignment of the control lists, and the transfer of militarily less significant items to CCL control, will facilitate UTC's ability to compete more effectively in the international marketplace while maintaining and enhancing U.S. national security and foreign policy objectives.

For UTC companies, a portion of defense trade licensing activity relates to defense articles and defense services falling under the present USML Category VI. UTC's marine products for surface ship equipment includes electric power and management sub-systems, atmosphere monitoring and management, fire detection and suppression, among others.

I. USML Category VI – Vessels of War and Special Naval Equipment

A. Surface Vessels of War and Special Naval Equipment.

Despite the apparent intention to transfer vessels of war to the CCL, VI(a) would control vessels of war equipped with any "mission systems" that are controlled on the USML. If interpreted broadly, the definition of "mission systems" in 121.15(a)(6) would effectively preclude the transfer of all or most surface vessels of war that would otherwise be transferred to the Commerce Department's proposed ECCN 8A609.a on the CCL because such vessels are routinely equipped with USML-controlled communication and navigation equipment.

We suggest revising the definition of "mission systems" to achieve a more balanced result. Specifically, revising the definition to exclude communication and navigation equipment for vessels of war, as described below, would be consistent with the apparent intent to transfer those types of vessels of war to ECCN 8A609.a.

1. USML Communication Equipment.

Military communication receivers/transmitters, which are needed for communication on military frequencies, appear to be captured by the definition of "mission systems". The installation of such equipment on a vessel of war should not cause the vessel to be placed on the USML because these items are necessary to conduct support, tender, repair, rescue, coastal, patrol, roadstead, other auxiliary or Coast Guard missions. Radios capable of transmitting on military frequencies are required not only for communication with land based stations, but also for communications with these and other vessels. Communication on

² UTC is submitting comments on the U.S. Department of Commerce's parallel proposed rules to amend the USML Category XX and the CCL to revise ECCNs 8x609 (Certain Surface Vessels of War and Related Commodities) and 8x620 (Submersible Vessels, Oceanographic and Associated Equipment).

military frequencies also may be required during humanitarian missions and for coordination between military and civilian authorities. "Military communication" is a basic function required for non-combat operations, and the presence of the military radio does not alter the mission or function of the vessel. Reflecting the above rationale, the proposed definition of "mission systems" should be revised to specifically exclude "military VHF, UHF, AM, FM and HF, and combinations thereof, radios for vessels of war for support, tender, repair, rescue, coastal, patrol, roadstead, other auxiliary or Coast Guard missions."

2. USML Navigation Equipment.

As is the case with military communications equipment, military navigation equipment is likewise required for vessels of war to perform their missions. Such equipment is necessary to use military navigation aids inside and outside the U.S. The installation of navigation equipment in a vessel of war does not alter the mission of the vessel but rather permits the vessel to be used for its intended purpose. We suggest the proposed definition of "mission systems" be revised to exclude "military navigation equipment for vessels of war for support, tender, repair, rescue, coastal, patrol, roadstead, other auxiliary or Coast Guard missions."

B. Category VI(b) - Vessels "specially designed" for military use that are not identified in (a) of this section are subject to the EAR under ECCN 8A609.

We believe the wording of this (b) section is confusing because some vessels not described in Category VI(a) are being moved to USML Category XX.

We recommend the wording be changed from "Vessels" to "Surface vessels".

C. The use of the term 'inventory vessels'.

The term 'inventory vessels' is used in 121.15(a). While this is assumed to mean vessels of war in service (as opposed to development or production), it is not clear what is meant by inventory, as it could mean, at a minimum, operational, reserve, or mothballed. It is also not clear if the inventory is that of the United States military, or other militaries.

E. Designation of Significant Military Equipment

Paragraph (f)(11) identifies as significant military equipment ("SME") vessel and naval equipment components, parts, accessories, attachments, and associated equipment that are (i) classified, (ii) contain classified software, or are (iii) manufactured or (iv) developed using classified data. While entries (i) and (ii) are reasonable criteria for military significance, we believe that paragraphs (iii) and (iv) are not. The use of classified data in the development or manufacture of an item is known only to the developer or manufacturer, or the sponsoring government agency, and may not have any bearing on the end use of the item.

The characteristic of being “developed” or “manufactured” with classified data by a supplier is not obvious at the next assembly level, and like ‘design intent,’ can be difficult to trace or prove. This is especially true since due to National Industrial Security Program operational requirements, the fact that classified data is used would not be open information. Therefore, we recommend deleting the criteria in paragraphs (iii) and (iv) because they are not good indicators of military significance.

F. Implementation.

As stated in our comments on other recent proposed rule changes, UTC believes that the transfer of items of lesser military significance from the USML to the CCL or from USML Category VI to USML Category XX will result in reduced cost and improved business flexibility. However, the transition of potentially tens of thousands of parts, components, accessories and attachments, each with a multiplicity of associated technical documents, will require a very substantial effort requiring a transition period to train staff, determine new jurisdictions and classifications, adjust Enterprise Resource Planning (ERP) systems and other automated tools, change document markings, and coordination with suppliers, distributors and customers. The philosophy of the phase-in should be to avoid unnecessary costs and schedule delays. To ease concern and possible confusion over this transition, the rule should explicitly address the phase-in of changes, as follows:

1. Phase-in of changes.

Permit a phase-in of changes through interim and final rules. The EAR underwent a similar change in 1996, and the transition was implemented with an interim rule effective April 24, 1996, with compliance not compelled until November 1 of the same year. A similar extended implementation time frame would allow companies to change computer systems, update marking procedures, and start the process of reviewing the jurisdiction and classification of a large number of items. Due to the size and complexity of the effort, we recommend a nine month phase-in period.

2. ‘Grandfathering’.

Permit ‘grandfathering’ of existing item jurisdiction and classification. This essentially makes the transition of items from the USML to CCL or USML Category VI to USML Category XX optional. Items would be re-categorized when there is a business case to transition eligible items.

3. Existing and in-process licenses and agreements.

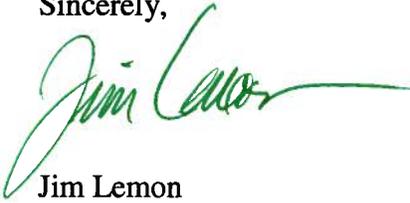
Permit ‘grandfathering’ of existing and in-process licenses and agreements. There may be cases where amending a Department of State authorization may be faster than applying for a new BIS license. In this case, the item(s) would

necessarily retain the jurisdiction stated in the authorization. Continuing to license an item under the original jurisdiction should not preclude transitioning the Category VI item to the CCL or USML Category XX without agency agreement.

* * *

For additional information, please contact the undersigned at (202) 336-7462 or, with regard to technical proposals, Howard Pfeifer at Hamilton Sundstrand Corporation at (860) 654-9941.

Sincerely,



Jim Lemon
United Technologies Corporation



Rolls-Royce

Rolls-Royce North America Holdings Inc.
Rolls-Royce Corporation at Indianapolis
2001 S. Tibbs Ave, Speed Code S31D
Indianapolis, IN 46241 USA

February 6, 2012

Director Charles B. Shotwell
Office of Defense Trade Controls Policy
Department of State
12th Floor, SA-1
2401 E. Street NW
Washington DC 20037

Submittal via Regulations.gov Portal

Reference: RIN 1400-AC99 [Public Notice 7736]
Proposed Rule

Subject: Amendment to International Traffic in Arms Regulations: Revision of
U.S. Munitions List Category VI

Dear Mr. Shotwell,

Rolls-Royce North America Holdings Inc. (the Company) is pleased to respond to the December 23, 2011 Federal Register Notice requesting comments on the proposed revision of *USML Category VI*.

Rolls-Royce appreciates the opportunity to review and comment on the proposed amendment to the International Traffic in Arms Regulations (ITAR) with regards to Category VI and agrees that a separate positive listing of surface vessels of war and their related parts, components, accessories and attachments will help define the proper parameters for export.

Rolls-Royce has reviewed the proposed changes, and has the following comments.

Category VI (b)

Delete in its entirety. The proposed language is too vague. A positive list will identify the proper controls. The proposed language leaves too much up for interpretation.

Category VI (c)

Revise wording to positively capture the unique military vessels as follows:

(c) Developmental **military** vessels and ``specially designed" parts, components, accessories, and attachments therefore, ~~developed under a contract with the U.S. Department of Defense.~~ **This includes vessels which are being developed principally**

to demonstrate and/or validate new technologies or improvements to current technology with specific applicability to defense articles.”

Category VI (f)(11)

While Rolls-Royce agrees with the protection of Classified information, it is not uncommon for unclassified items to be developed and manufactured using both classified and unclassified data. Rolls-Royce recommends the deletion of (iii) and (iv).

- (11) any component, part, accessory, attachment, equipment, or system that:
- (i) is classified;
 - (ii) contains classified software;
 - ~~(iii) is manufactured using classified production data; or~~
 - ~~(iv) is being developed using classified information.~~

“Classified” means classified pursuant to Executive Order 13526, or predecessor order, and a security classification guide developed pursuant thereto or equivalent, or to the corresponding classification rules of another government.

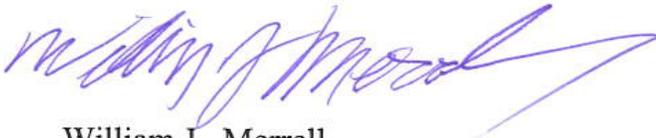
121.15 (a)

Remove the terms “developmental, demilitarized, decommissioned, production or inventory”. The term “inventory” is not defined and therefore creates too much opportunity for interpretation. Removing the term does not minimize the intended control.

(a) In Category VI, “surface vessels of war” ~~means developmental, demilitarized, decommissioned, production, or inventory~~ vessels, manned or unmanned, that:

(a)(6) Delete in its entirety. The broad terminology used seems to counter the goal of creating a more positive list. This is inconsistent with the intent for current ITAR platforms not specifically enumerated moving to the EAR “600” series. The majority of military vessels would contain at least one of the systems described.

Sincerely,



William J. Merrell
Vice President, Global Trade Compliance
Rolls-Royce North America Inc.



February 6, 2011

PM/DDTC, SA-1, 12th Floor
Directorate of Defense Trade Controls
Office of Defense Trade Controls Policy
Bureau of Political Military Affairs
U.S Department of State
Washington, DC 20522-0112
Submitted via <http://www.regulations.gov/>

Re: RIN 1400–AC99

To Whom It May Concern,

I am writing on behalf of the Association of University Export Control Officers (AUECO), a group of senior export practitioners at twenty five accredited institutions of higher learning in the United States. AUECO members monitor proposed changes in laws and regulations affecting academic activities, and advocate policies and procedures that advance effective university compliance with applicable U.S. export/import and trade sanctions regulations.

AUECO is specifically interested in contributing to the export control reform effort in order to ensure that the resulting regulations do not have a disproportionate impact on academic pursuits. As a result, AUECO is providing the following comments in response to the Department of State (DoS) proposal to amend the International Traffic in Arms Regulations (ITAR) to revise Category VI (surface vessels of war and special naval equipment) of the U.S. Munitions List (USML) to describe more precisely the vessels and related defense articles warranting control on the USML.

The Need for Reciprocal Licensing Exemptions/Exceptions

As previously expressed in our comments submitted to the Bureau of Industry and Security on December 22, , 2011, AUECO is concerned that in some instances transferring items to the Commerce Control List (CCL) could result in technologies being regulated in a more restrictive manner than if they were controlled under the ITAR. Under the ITAR, important general exemptions exist that can provide relief from licensing requirements.

For example, 22 CFR §125.4(b)9 allows for the export of technical data (including classified data) sent or taken by a U.S. person who is the employee of a U.S. corporation or government agency to a U.S. person employed by that U.S. corporation or government agency outside the United States for some purposes. 22 CFR §125.4(b)10 permits disclosures of unclassified technical data in the U.S. by U.S. institutions of higher learning to foreign persons who are their bona fide and full time regular employees if those employees have a permanent abode in the U.S. throughout their employment period in the U.S., are not nationals of proscribed countries, and the institution informs the employees in writing of the obligation not to transfer the technical data to other foreign nationals. A similarly important ITAR exemption for

academia is 22 CFR §125.4(b)7 which allows for technical data to be exported to the original source of import.

AUECO strongly recommends that DDTC and BIS ensure that reciprocal exemptions or similar relief to licensing requirements be provided under the EAR. In the absence of reciprocal provisions under the EAR, moving items and technologies from the USML to the CCL will increase the licensing burden at academic institutions.

Consistent Applicability of Definition of “Mission Systems”

While paragraph §121.15(a)(6) defines the term “mission systems” for all of Category VI, there is a lack of consistency between the definitions of “mission systems” used in in this paragraph and that used in paragraphs §121.3(a)(6) (Category VIII) and §121.4(a)(3) (Category VII) that could create confusion. Specifically, “mission systems” as defined in paragraphs §121.3(a)(6) and §121.4(a)(3), specify that “mission systems”... are defined as... “defense articles that perform specific military functions”. AUECO suggests that Paragraph §121.15(a)(6) be revised to make it consistent with the Category VII and VIII definitions of “mission systems” and proposes the following change:

(6) incorporate any “mission systems” controlled under this subchapter. “Mission systems” are defined as “systems” (see § 121.8(g) of this subchapter) **that are defense articles** that perform specific military functions such as by providing military communication, electronic warfare, target designation, surveillance, target detection, or sensor capabilities.

Without this clarification, language such as that found in §121.15(a)(6) (“mission systems”) will confuse exporters.

Consistent Applicability of Criteria Defining “Developmental” Defense Articles

“Developmental” items (e.g., vessels, aircraft) are dealt with in an inconsistent manner in the subject categories. In Categories VII and XX, “developmental” items are controlled as defense articles only when the developmental item has the characteristics specified in paragraphs §121.4(a) and §121.14(a), respectively. In Category XX, “developmental vessels” are further designated Significant Military Equipment when two criteria are met: (1) the “developmental vessel” meets the criteria of paragraph paragraphs §121.14(a), and (2) the “developmental vessel” is developed under a Department of Defense contract. On the other hand, as proposed in Categories VI and VIII, “developmental vessels” and “developmental aircraft” are defined as defense articles without regard to the criteria specified in paragraphs §121.15(a) and §121.3(a) respectively. In these instances, mere funding under a Department of Defense (DoD) contract appears to be the criteria that defines the developmental vessel or aircraft as a defense article. AUECO believes that the definition of developmental vessels in Category VI is overly broad. AUECO recommends that §121.1 Category VI(c) be amended to add the following: “(see § 121.15 of this subchapter)”.

Applicability of Category VI §121.1(c) to the Products of DoD-Funded Fundamental Research

If the mere funding by DoD will make a developmental surface vessel a defense article, then AUECO is concerned that surface vessels developed for fundamental research or educational purposes under DoD funding might now be considered defense articles.

Unless further clarified, as noted previously in comments relating to Category VIII developmental aircraft, there will be a chilling effect on DoD-funded research into developmental surface vessels at institutions of higher learning. Researchers will be unwilling to bring their products of fundamental research (including experimental and research vessels, parts, components, etc.) into a DoD-funded developmental vessel project, knowing that the resulting vessels, parts, etc., will be automatically designated as defense articles, regardless of whether or not these items meet the criteria of §121.15(a). DoD will thereby lose the benefit of leveraging others' research products into DoD-funded fundamental research.

AUECO notes that the revised Category VII wisely avoids such a funding-related restriction on developmental ground vehicles. AUECO strongly recommends that DDTC clarify that §121.1 Category VI (c) would not, in fact, capture developmental vessels (or "specially designed" parts, components, etc.) funded under a DoD award that qualifies as fundamental research.

The Need for Harmonized Definitions

The forthcoming harmonized definitions under the export control reform initiative are vital to the interpretation of the proposed regulation and will substantially impact AUECO's responses to this and other requests for comments. AUECO is concerned that without the final definitions of terms such as public domain/publicly available, fundamental research, technology/technical data, and development we cannot appropriately analyze the proposed rules under consideration. For example, the definition of "development" and the redefinition of "fundamental research" are critical to the interpretation and implementation of the proposed rewrites of Category VI, VII, VIII, and XX.

AUECO recommends that the proposed harmonized definitions be released prior to the next Federal Register notice requesting comments on export reform. We would further ask that the export community be offered the opportunity to comment not only on the proposed definitions once released, but also be afforded the opportunity to provide comments on previously closed proposed regulations when the proposed definition affects the interpretation and/or implementation of the proposed or final rule.

Closing

In closing, AUECO would like to express its appreciation for the opportunity to provide comments on these proposed changes. AUECO supports converting the USML into a "positive list", and hopes that this step will reduce jurisdictional disputes and uncertainty.

AUECO is concerned that without a lack of reciprocal licensing exemptions under the EAR, moving items and technologies from the USML to the CCL may create an increased licensing burden for universities. Additionally, as currently written, the proposed revisions to Category VI appear to create confusion and uncertainty as to the applicability of the term "mission system". Without consistent structure and language in each of the paragraphs under Category VI, exporters may be forced to treat items and technologies that do not appear to provide a critical, substantial or significant military advantage as

being ITAR controlled. A lack of relevant definitions also makes the proposed revisions to Category VI concerning. For example, the lack of harmonized definitions for key terms such as “development” and “fundamental research” that is absolutely necessary to analyzing the proposed rewrite. AUECO is also concerned about the applicability of Category VI §121.1(c) to DoD fundamental research and educational outreach.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gretta N. Rowold', written in a cursive style.

Gretta N. Rowold
Chair
Association of University Export Control Officers
Email: auecogroup@gmail.com
Website: <http://aeeco.org/>