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U.S. Department of State  
Office of Defense Trade Controls Policy  
PM/DDTC, SA-1. 12th Floor  
2401 E Street, NW, (SA-1)  
Washington, D.C. 20037

July 20, 2012

Subject: ECR Transition

Reference: DOS-2012-0020

Dear Ms. Goforth:

The General Electric Company, acting through its GE Aviation business unit (GEA), submits the following comments for the aforementioned proposed rule. GEA appreciates the effort by the Administration to address this issue. GEA commends the Administration's efforts on export control reform and agrees with the overall proposed structure for a smooth and seamless transition. However, GEA suggests a simplified approach that will provide exporters the greatest flexibility at the lowest cost. Finally, GEA would like to stress that this proposed rule will require companies to undergo multiple implementation changes (e.g. classification changes, tool updates, training, licensing) that will require time and resources. Therefore, the effective date for a final version of this rule should be of at least 180 days from its publication.

### **PROPOSED TRANSITION PROCESS**

#### *Existing Authorizations*

*Authorizations for items transitioning to the CCL that are issued in the period prior to the date of final rule publication for each revised USML category will remain valid until expired, require an amendment or are returned by the authorization holder. Any limitation, proviso or other requirement imposed on the DDTC authorization will remain in effect. During the transition period, exporters may continue to identify the original USML category delineated in the DDTC authorization on all required shipping documentation and AES filings.*

*Applications and amendment requests for items transitioning to the CCL that are received by DDTC prior to final rule publication for each revised USML category will be adjudicated up until the effective date of the rule, unless the applicant requests that the application be Returned Without Action. Applications and amendments for items moving to the CCL which are received after the effective date will be Returned Without Action with instructions to contact the Department of Commerce.*

**RATIONALE**

This approach will allow exporters to evaluate the impact of the USML to CCL change and assess on a case-by-case basis whether to continue operating under valid authorizations or transition to the EAR. Given the time and effort to secure the initial ITAR authorization, it may in fact be more cost effective for the exporter to continue operating under the authorization rather than submit a duplicate request under the EAR. In most cases, GEA estimates that transitioning to the EAR will significantly streamline the export process, particularly when eligible for EAR license exceptions (e.g., STA, RPL, TMP, etc.). But if ineligible for an EAR exception, GEA would like the flexibility or continuing to export under existing DoS approvals throughout the life of the authorization or until an amendment is required.

If DDTC needs a firm date at which transition would be completed, we suggest 4 years as the appropriate transition period.

**COMMODITY JURISDICTION SANCTITY**

GEA recommends adding the following sentence to address validity of existing CJs:

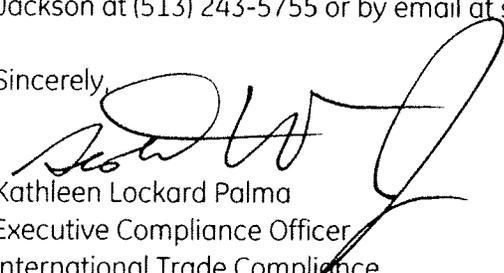
*"Previously rendered CJ determinations for items deemed to be CCL, shall remain valid and their parts, components, accessories and attachments covered in the CJ determination shall remain subject to Commerce jurisdiction. Classifications of such items under the CCL shall also remain valid after the transition date."*

**RATIONALE**

The suggested addition will preserve the validity of previous CJ determinations. This is particularly important for situations where a precedent CJ included a CCL classification in addition to a jurisdiction assessment. Without this clarification, exporters may suddenly discover items previously assessed as "EAR99", or other CCL entry, are transitioned to the "600-Series" with corresponding increased levels of control. Further, this note will clarify that exporters do not need to start again with assessments of products that were subject to prior CJs and would eliminate the potential for parts and components of an end item that was previously determined to be Commerce pursuant to a CJ from potentially being subject to the ITAR.

If you have any questions or require additional information concerning this submission, please contact the undersigned at (202) 637-4206 or by e-mail at: kathleen.palma@ge.com or Scott W. Jackson at (513) 243-5755 or by email at scott\_jackson@ge.com.

Sincerely,

*For*  
  
Kathleen Lockard Palma  
Executive Compliance Officer  
International Trade Compliance

**From:** Bump, Mark W. [<mailto:mark.bump@timken.com>]

**Sent:** Thursday, August 02, 2012 10:27 AM

**To:** DDTC Response Team

**Cc:** Christensen, Larry

**Subject:** ATTN: ECR Transition Guidance

To: DDTC Response Team

Re: ECR Transition Guidance

The following are comments from The Timken Company (M3899) regarding the Department of State's Export Control Reform Transition Plan (Federal Register Vol. 77, No. 120, Thursday, June 21, 2012, page 37346), i.e., the "ECR Transition Plan". We will be sending in similar comments to the Department of Commerce.

We believe the President's Export Control Initiative is a necessary step to enhance U.S. national security and to help our economy. We appreciate all of the hard work that the President's team has done, to reach this point. There are a few things that we want to confirm, set out below, to ensure that Export Reform does indeed provide the benefits intended.

Our comments regarding the ECR Transition Plan as follows:

- 1. Want to confirm that Reexport/Retransfers of USML items that have transitioned to the CCL and are outside the U.S., are eligible for use of the EAR *de minimis* rule by foreign person.**

The ECR Transition Plan indicates that once a foreign person receives an item (through Department of State authorization) and has confirmed that the item has transition to the CCL, the foreign person should treat the item as such, and seek retransfer or reexport authorization from the Department of Commerce, as required by the EAR. Assume that the item would transition to a "600 Series" item under proposed ECCN 9A610.x.

We understand such item (once the foreign person has confirmed transition to the CCL) would then be eligible for the EAR *de minimis* rule,

and that if the foreign person incorporates that item into an assembly or end-item, and the U.S. controlled content (per EAR) is less than 25%, then that assembly or end-item would not be subject to the EAR, nor would be subject to the ITAR (except the assembly or end-item could not be sent to a country under U.S. arms embargo, e.g., it could not be sent to China).

We provide bearings {currently defense articles under USML Category VIII(h)} to a customer in a NATO country, who installs the bearings into transmissions, and in turn exports those transmissions to various countries which use the aircraft. Our approved DSP-5 permits our customer to reexport the transmissions with our bearings in it, to certain NATO countries, and to a country outside of NATO (India). Under the ECR Transition Plan, our customer could verify with us (should the bearings become items under ECCN 9A610.x), that the bearings have transitioned to the CCL, and our customer could take advantage of the EAR *de minimis* rule. Specifically, our customer could incorporate our bearings into transmissions, and so long as the transmissions satisfy the conditions of the EAR *de minimis* rule (less than 25% U.S. controlled content, no reexport to arms embargo country), our customer could reexport the transmissions to India (for end use by government of India) without a BIS license.

**2. Want to confirm that ECR Transition Plan will not result in more onerous export controls on items subject to prior “not ITAR” Commodity Jurisdictions (“y.99”).**

We understood from the “July 15 rule” that the reason for creation of the “600 series” was to create a “Commerce Munitions List” for items being moved from the USML to the CCL (Federal Register Vol. 76, No. 136, Friday July 15, 2011), and not to place stricter controls on items already classified under ECCNs such as 9A991.d. BIS acknowledges that it wants to avoid the unintended consequence of more onerous controls than current requirements (Federal Register Vol. 77, No. 120, June 21, 2012, page 37525).

As part of the ECR Transition Plan, we do not want the unintended consequence of items currently under ECCN 9A991.d per a Commodity Jurisdiction, to be reclassified as 9A610.y.99, on the ECR Transition Plan effective date. Commodity Jurisdiction Case CJ1244-11 resolved that certain bearings (as described) were not subject to the licensing authority of the Department of State, and further, the Department of Commerce advises that the bearings have an ECCN of 9A991.d. We believe that CJ1244-11 “identified” these bearings as ECCN 9A991.d, as the term is used in the “November 7 Federal Register” (Federal Register Vol. 76, No. 215, November 7, 2011, page 68681), and that these bearings should continue to be 9A991.d, not ECCN 9A610.y.99, after the effective date of the ECR Transition Plan.

**3. Request BIS consideration of expanding License Exception STA by permitting foreign recipients of items exported under STA, to use the de minimis rule, for parts and minor components, if “up front” approval given by BIS.**

We anticipate that our foreign customers in the STA-36 countries will be somewhat reluctant to recognize the benefit of STA for “600 Series” items, as the de minimis rule will not apply for reexports/retransfers. For example, a foreign company in an STA-36 country may make aircraft which are used by STA-36 countries and other countries. To be able to take advantage of STA, the foreign company may have to maintain an “STA inventory”, then for retransfer/reexport of the aircraft outside of STA-36 countries, will have to have a “non-STA” inventory of the same part.

We suggest that BIS consider expanding the STA License Exception for “600 Series” parts and minor components, to permit foreign persons to use the EAR *de minimis* rule, if “preapproved” by BIS, for “600 Series” items exported to the foreign person under STA. Perhaps allow U.S. exporters of “600 Series” parts and minor components to STA-36 countries, to apply for permission from BIS, to permit foreign persons in an STA-36 country to use the EAR de minimis rule, to reexport or

retransfer the end-item, assembly or larger component, outside the STA-36 country, to specified countries and end-users.

For example, a helicopter used by some NATO countries, may also be used by the Government of India (GOI). It would be beneficial if the foreign person (who incorporates the bearings into a transmission in a NATO country) could receive bearings from the U.S. under STA, and ship the transmissions to both NATO countries and India, provided BIS would give prior permission to the foreign person to ship transmission to GOI per BIS *de minimis* rule. This would make the supply chain simpler (by avoiding multiple inventories, purchase orders, etc. of STA and non-STA parts) and not pose risk to national security.

We appreciate this opportunity to provide comments, and you are welcome to contact us with any questions,

Sincerely,

*Mark Bump*

The Timken Company  
Mgr - Global Trade & Compliance  
Customs Attorney  
330-471-3949  
GNE-12

# PUBLIC SUBMISSION

**Docket:** DOS-2012-0020

Department of State - Export Control Reform Transition Plan - Policy Statement

**Comment On:** DOS-2012-0020-0001

Defense Trade Export Control Reform Transition Plan

**Document:** DOS-2012-0020-DRAFT-0002

Comment on DOS-2012-0020-0001

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## Submitter Information

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### General Comment

For updates to the USML resulting from moving products to the 600 series under the EAR, is there any effort by any agency to coordinate ECR with ATF to have a consistent set of changes to the USMIL (import version of the USML) now or in the future?

Today, the USML export list and the USMIL import list are reasonably similar to allow industry to handle the movement of defense articles in both directions, for permanent transfer, under a reasonably consistent set of regulations. Post ECR, the importation of defense articles will continue to be regulated under the USMIL although many items will have moved to the EAR under the 600 series.

Is it intended that the Government's definition of a defense article continue to be different depending upon the direction of permanent transfer?

An example of the added burden to industry is a manufacturer and exporter of defense articles who permanently imports subassemblies that are ITAR controlled for assembly into ITAR end products that are sold domestically (therefore requiring an ATF permit for the original import) and sold abroad (via DDTC licensing). Post-ECR, if the export of these end products is now EAR controlled, that company would still need to review the distinctly different USMIL and continue to request, obtain, and decrement against ATF permits resulting in added complexity internally for tracking, maintenance and training of staff. Is the decoupling of a critical US agency in this multi-agency effort intentional, an oversight, or planned to be addressed at some future date to be consistent with the overall Administration's ultimate objectives?



August 03, 2012

U.S. Department of State  
Candace Goforth  
Office of Defense Trade Controls Policy  
2401 E Street, NW  
Washington, DC 20037

Subject: ECR Transition Guidance

Dear Ms. Goforth:

Huntington Ingalls Industries (HII) welcomes the opportunity to provide the following inputs to the Federal Register Notice of Proposed Rule, dated June 21, 2012, regarding the Export Control Reform Transition Plan.

Overall the transition plan policy statement outlined by the Directorate of Defense Trade Controls (DDTC) is straightforward. There are however a few items that would benefit from additional explanation and clarification in the Final Rule.

### **I. DSP-73 Scenario**

The scenario that many may face during transition includes previously exported United States Munitions List (USML) controlled hardware against a DSP-73. If that hardware is currently out of the U.S. and becomes subject to the transition, then its controls will move to the Commerce Control List (CCL) upon the effective date. The DSP-73 will expire two years from the effective date or its normal expiration date whichever comes first. In this scenario, at the time of expiration, the hardware is still required by the foreign party and cannot be returned to the United States. Typically, the exporter would obtain a replacement DSP-73 to authorize the extended duration for the hardware to remain in the foreign country. Interpreting the transition details provided by DDTC and the Bureau of Industry and Security (BIS), we understand that no new licenses will be required from either DDTC or BIS related to the hardware remaining in the foreign country. At time of re-import, the hardware would clear Customs with shipping paperwork that has no references to a license. HII would like DDTC to confirm expectations on the disposition of the hardware and clarify licensing requirements in this scenario. We

understand the best course of action would be to return the hardware prior to expiration and move forward with licensing the hardware under the Export Administration Regulations (EAR). Please consider as part of your guidance that a return of the hardware would greatly jeopardize build schedules for U.S. Government deliverables and the hardware must stay in the foreign country past the expiration date. There is also no expectation of a permanent export; the hardware will ultimately return to the United States.

## **II. Automated Export System (AES)**

Please clarify which classification is to be identified in AES for hardware that has moved to the CCL but is still licensed under a Department of State authorization. Does the company maintain its USML category on the shipment record (EEI) to match the license or do they begin to cite the new applicable ECCN which now has control of the product as of the effective date?

## **III. Foreign Supply Chain Activity**

As background, HII builds nuclear and non-nuclear military vessels that will clearly stay on the USML following the effective date of the export reform. However, these vessels are built with many vendor furnished systems and components that will move to the CCL. If foreign vendors are involved, they can be expected, depending upon their product, to participate in the installation or integration of their parts into the vessel. HII currently manages the majority of its supply chain activity under Technical Assistance Agreements (TAAs). This represents the preponderance of HII's export activity and is applicable to roughly 75% of its current export authorizations. In reviewing the transition plan details of both DDTC and BIS, and the overall export control reform initiative, it has been interpreted that HII, through its normal foreign supply chain activity, will be subjected to double licensing. The following information expands upon this interpretation and provides details for which both DDTC and BIS should consider as it moves towards a Final Rule.

### **(a) The Scenario**

This supply chain scenario contemplates incorporating a CCL item into a USML item. This is a very real scenario as we expect many ship systems to transition from the ITAR to the CCL. An anticipated example under this scenario is the incorporation of a CCL part or component captured at ECCN 8A609.x into a USML vessel controlled at Category VI(a). In order to install/integrate the CCL part or component, data related to the military vessel must be shared for proper installation. This would create an export of USML Category VI(g) data and services. Additionally, installation of the part or component would thereby create an export of data controlled by ECCN 8E609.a.

### **(b) Double Licensing**

Based upon the proposed changes to the EAR, we have interpreted that this scenario will require both a license/agreement from DDTC to cover the integration information and services related to the USML controlled vessel and a separate license from BIS to cover the installation of the CCL controlled part/component.

*Possible license exception – STA §740.20.* It was our understanding that the Strategic Trade Authorization (STA) license exception would be used in the majority of “600 series” exports. Clarification is still required to outline how STA could be used for many “600 series” exports. Specifically, in reviewing §740.20(c)(1), note that this section does not appear to apply to ECCNs that also have AT controls. This would eliminate any product or technology captured by the proposed ECCNs 8A609 and 8E609. STA could not be utilized. Note also that the proposed language in the Note 2 to paragraph (c) allows for use of STA if DDTC or BIS have issued a license to the same purchaser, intermediate consignee, ultimate consignee and end user. However, the proposed (d)(2) language related to “600 series” identifies that the only eligible foreign parties are foreign governments. It would appear that foreign vendors would not be eligible end users under STA even if prior export approvals had been obtained from DDTC or BIS. By keeping the eligible foreign parties to only foreign governments, the exception for foreign supply chain activities would not apply, meaning a license will be needed for all foreign suppliers of “600 series” piece parts, components and accessories as no other exception appears to be available to cover this activity. If interpreted correctly, this would appear to be the same level of coverage as currently applied by the ITAR, the least significant part or component is generally controlled the same way as the most significant part or component and the end item itself.

### **(c) Additional Detail on the Supply Chain Scenario**

To elaborate on the supply chain scenario further, Federal Register Notice of Proposed Rule RIN 1400-AC80 was published on April 13, 2011 that related to a revised definition of defense services. The proposed revisions included new language at §120.9(a)(2) which comprised the “integration” of items, whether controlled by the USML or the CCL, into USML controlled defense articles even if ITAR-controlled “technical data” is not provided to a foreign person during the provision of the services.

We do not know the status of this proposed rule but have reviewed the transition guidance against the proposed new defense services definition. Clarification will be required to coordinate BIS’ transition plan and DDTC’s policy statement with the proposed new definition and its relationship to installing “600 series” parts into USML items. DDTC’s policy statement regarding Returning Without Action any license or agreement submission that incorporates a CCL item will need more explanation.

It is HII's interpretation that DDTC was moving away from controlling products and technologies at the basic level as it applies to operation, installation, maintenance and repair. Specifically, DDTC proposed in its Federal Register Notice of Proposed Rule the removal of overly broad export coverage and proposed eliminating certain forms of assistance and services that no longer warranted export control under the ITAR. HII will recommend to BIS that they follow in this movement toward the removal of overly broad coverage and eliminate from "600 series" Category E ECCN headers (e.g., ECCN 8E609) the words "operation, installation, maintenance, repair or overhaul" and replace with the word "use". Furthermore, the removal of such coverage would eliminate the licensing requirement outlined above as the installation of those parts would not be subject to export control under the EAR. This in turn would no longer result in double licensing.

HII also supports the finalization of and formal publication of the revised definition of defense services.

**(d) Unforeseen Negative Impact if Interpretation is Correct**

The burden associated with double licensing of such a scenario cannot be understated. Not only would we be tasked with identifying and obtaining the appropriate licenses from the corresponding regulatory agencies, we also would be subjected to administering two licenses and implementing two sets of regulatory rules for one installation event. This is untenable considering the differing limitations and provisos each regulatory agency could apply to their licenses for the same activity and each regulation's strict adherence requirements to record keeping.

We see a particularly heavy burden for companies like HII that utilize internal electronic approval and record keeping systems. Under the supply chain scenario described above, each time an export is contemplated, an internal company request is generated for approval. Since HII employees will now operate under two separate license authorizations, they would be required to enter two export requests in the electronic system; one for each license. Consequently, it would task the export compliance professionals to review and approve two requests in order to administer both licenses. Please keep in mind that even if by chance the CCL part or component happened to be captured by ECCN 8A609.y, installation is still covered and the related data is still captured at ECCN 8E609.y. The lower level controls would make the data eligible for No License Required (NLR) export coverage; however, even NLR exports require a record to be maintained. The administration and record keeping burdens are not lessened by the alleviation of a formal export license approval from BIS.

Implementing the proposed changes to the export control system would be tantamount to doubling the current workload of export compliance professionals who work in a foreign supply

chain business model and manufacture USML controlled products. HII and like companies would be subjected to large increases in licenses to manage and would most likely be required to hire more staff to implement the changes and manage the proposed export control system far beyond the two year phased implementation period.

Not only could the double licensing cause a significant burden, it could confuse foreign parties as to how they are to properly control the data they are receiving. For instance, the installation and corresponding data described above would be delivered under an approved license from BIS. That license might be issued with a proviso that requires formal notification to the foreign party that they'd be receiving data under the CCL. While at the same time of providing formal notification to comply with the BIS license, they'd be presented with a TAA for signature that incorporates ITAR control requirements. Asking that foreign parties grasp and understand the distinctions between U.S. export control coverage of the data they receive in this supply chain scenario can lead to confusion and a lack of clarity. Greater risks surface for the foreign party when re-exporting or retransferring the data under the wrong regulation.

We are still reviewing the potential impact of items changing controls to BIS that have related drawings and documents which contain markings dictated by our U.S. Navy contractual terms and DD 254 requirements. There is a potential that a BIS license proviso marking requirement, exception marking requirements or the general DCS under the EAR may be in direct conflict with contractual marking requirements. We will continue to explore the breadth of this issue and suggest that DDTC and BIS consult with the Department of Defense in order to provide clarification in the Final Rule. Contrary markings could also lead to confusion by a foreign party and result in inappropriate treatment as described in the last paragraph.

Lastly, the burden is not industries' alone. Both DDTC and BIS licensing officers' workload would not be lessened in this scenario.

As this supply chain scenario is a very common one at HII, we request thoughtful consideration be made to not have industry double license its export activity for installation and integration of CCL captured products into USML platforms or systems.

#### **IV. Final Comments**

Export control reform is a monumental task focused on shoring up controls surrounding our nation's most sensitive technologies. We recognize the hard work and attention that DDTC has devoted to this effort; however, the resulting proposed regulatory changes have generated questions and concerns about interpretation and application to everyday business; particularly within a foreign supply chain business model. Additional clarification will be needed.

We appreciate the opportunity to outline an export scenario which applies to many aerospace and defense companies. Our interpretation of the proposed changes would lead to double licensing. Any clarification DDTC can provide to counter that interpretation is much appreciated.

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

Sincerely,

A handwritten signature in blue ink that reads "Sandra R Cross". The signature is written in a cursive, flowing style.

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



Export Group for Aerospace & Defence

Operating under the joint auspices of:



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The trade association for  
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3<sup>rd</sup> August 2012

Office of Defense Trade Controls Policy  
US Department of State  
Washington, DC, 20522-0112  
United States of America

Regulatory Policy Division,  
Bureau of Industry and Security  
Room 2099B  
U.S. Department of Commerce,  
Washington, DC 20230  
United States of America

Dear Sir,

**RIN 0694–AF65 Regulatory Changes — ECR Transition Guidance**

As part of the President's Export Control Reform (ECR) Initiative, on 21<sup>st</sup> June 2012 in the Federal Register ([77 Fed. Reg. 37524](#)) and on 25<sup>th</sup> June 2012 in the US Federal Register ([77 Fed. Reg. 37346](#)), the U.S. Department of Commerce's Bureau of Industry & Security, and the U.S. Department of State's Director of Defense Trade Controls (State/DDTC), respectively, issued requests seeking public comment on the proposed implementation plan for defense articles and defense services that will transition from the jurisdiction of the Department of State to the Department of Commerce. The intent of this plan is to provide a clear description of Commerce/BIS's and State/DDTC's proposed policies and procedures for the transition of items to the jurisdiction of the Department of Commerce. The revisions to this rule are part of the Department of State's retrospective plan under E.O. 13563, completed on August 17, 2011. It was requested that any interested parties feed any comments into the US Commerce Department and the US State Department on the proposed regulatory changes relating to the Export Control Reform Transition Guidance, for their consideration, by Monday 6<sup>th</sup> August 2012.

This response is provided by the Export Group for Aerospace and Defence (EGAD), on behalf of UK Industry. EGAD is a not-for-profit-making special interest industry group focusing exclusively on all aspects of export and trade control matters, and is the only dedicated national industrial body in the UK dealing exclusively with export control issues. EGAD operates under the joint auspices of the ADS Group Ltd (ADS), the British Naval Equipment Association (BNEA), INTELLECT and the Society of Maritime Industries (SMI).

We have been watching from the UK as the plans have been announced and progressed for the on-going overhaul of US export controls, with great interest. We strongly support the plans for the proposed reforms, from the viewpoint of UK Industry, and are aware that other Industry trade bodies, in other EU Member States (and, we are convinced, even further afield) have equally been watching what has been happening in the US with great interest.

EGAD welcomes the opportunity to comment on the proposed ECR Transition Guidance, as well as the fact that the US Department of State is so actively seeking to amend the ITAR rules.

We feel from the viewpoint of UK Industry that the broad proposals are to be welcomed, in general; however, greater clarity and guidance to assist overseas customers (and US exporters) to continue operating efficiently while embracing a new export control regime is essential, in our view.

For all of its many perceived shortcomings, under the existing ITAR system, at least re-exporters know, with some level of certainty, where they stand on the US-sourced items that they receive, and what they then are allowed to do with them. We fear that the new, post-ECR system offers no equivalent obvious clarity which is in any way comparable to this.

In particular, we see major practical difficulties for foreign companies in classifying legacy items, some decades old, whether in their immediate inventories, or in the hands of end-users where companies may still have responsibilities for repair, support, update and disposal.

### **Overseas Companies Seeking Control List Classifications**

Given the continuing problems which we know that our companies (and, we assume those of other developed nations) have consistently and repeatedly experienced to obtain definitive confirmation from US exporters about the individual control list classifications of items that they receive under the existing system, there is going to be an essential need for the new, even more complex post-ECR US export control system to have to feature some kind of legal obligation on the US exporters to have to provide authoritative and definitive information to their non-US customers as to the control list classification of the items that they are exporting. Indeed, US exporters should not only be required to state the control list category of their export, but also, for a reasonable period (say 2 years), the former USML category, in the case of 600-series items.

Without this legal obligation, there will be even greater uncertainty within the minds of the non-US parties as to the regulations that would apply for the items that they receive. Such an obligation would not be seeking to introduce anything totally revolutionary and new for the US companies concerned, as they already have to inform your own US Immigration & Customs Enforcement authorities on the categorisation of the goods and technology that they are exporting.

Not all overseas companies have the in-house knowledge and expertise to be able to assess jurisdiction for themselves, and assistance to enable them to do so would be invaluable. The risk of legal liability might well result in non-US firms seeking to “play safe” and add to the increasingly common commercial trend for them to “buy American last”, and seeking alternative sources of supply for what they are seeking, which is the complete opposite of what the ECR initiative was intended to achieve.

One possible solution would be:

- a. To amend ITAR §123.9.b so it reads  
“These commodities **are Category xxxxx commodities**. They are authorized by the U.S. Government for export only to [country of ultimate destination] for use by [end-user]. They may not be transferred, transshipped on a non-continuous voyage, or otherwise be disposed of, to any other country or end-user, either in their original form or after being incorporated into other end-items, without the prior written approval of the U.S. Department of State.”; and
- b. For the Department of Commerce to
  - re-affirm the requirement contained in § 758.3 of EAR (please see below); and

### **§ 758.3 RESPONSIBILITIES OF PARTIES TO THE TRANSACTION**

In routed export transactions where the foreign principal party in interest assumes responsibility for determining and obtaining licensing authority, **the U.S. principal party in interest must, upon request, provide the foreign principal party in interest and its forwarding or other agent with the correct Export Control Classification Number (ECCN), or with sufficient technical information to determine classification.**

In addition, the U.S. principal party in interest must provide the foreign principal party in interest or the foreign principal's agent any information that it knows will affect the determination of license authority, see §758.1(g) of the EAR.

- amend **§ 758.6 DESTINATION CONTROL STATEMENT, so it reads** “These commodities, technology or software are ECCN xxxx commodities. They were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited.”

Also, ideally, there would need to be some form of broad-ranging approach adopted by the US Government, and what is vitally needed is for the US Government to compile and publish on a public domain website a list of items which have been transferred under the ECR initiative from ITAR to the EAR, in order to seek to try to alleviate the administrative burden on companies (both US and non-US) which is going to be created by the re-categorisation initiative. With a published list, for any of these categories of parts transferred to Commerce that have a DTrade-issued DSP5 licence, it may be possible to notify those US parties that these parts/categories have now moved to Commerce. At least then the US supplier would know which of their foreign parties had received goods subject to the ECR.

### **600-series items and De Minimis Rule**

We believe that there is a need for a clear statement from the US Department of Commerce's Bureau of Industry & Security on how incorporation will work for 600-series items. Overseas contractors need to have enough information at their disposal for them to make informed “de minimis” assessments. Any uncertainty on this could result in the US Government being on the receiving end of a veritable tsunami of queries from organisations, especially at the lower tiers, from around the World, who lack the in-house expertise to be able to make such complicated calculations for themselves, and, otherwise would face the herculean task of having to categorise for themselves every single US-sourced line item in their stocks, as well as all spares that they own.

The issue of legacy spares is one where considerable clarity will be needed. Companies need to demonstrate how they have calculated for themselves that they are below the “de minimis” level. We therefore propose that the current guidelines, contained in Supplement No.2 to Part 734 – Guidelines for *DE MINIMIS* RULES, be amended so it offers greater clarity on how to go about this, by including practical examples, FAQs and more definition of terms such as “fair market price”, for instance. We also feel that there is a strong need to address the problem of the requirement for a one time report to BIS in the case of a “de minimis” claim involving co-mingled technology (see EAR 734.4(d)(3)). This appears to be quite impractical in the case of re-categorised items, and should be dropped, in our view.

### **Legacy Items**

There are many thousands of “legacy” items currently in circulation around the World, involving vast numbers of components and technical data (much of which is likely to be co-mingled) which have been originally transferred with a relevant licence under the ITAR, which are now going to have to be re-categorised. For many of these items the USML category may not have been provided, and the supplier unable, or unwilling, to provide advice about recategorisation. The scale of this task is enormous and some system and process needs to be adopted to assist non-US customers to undertake it, which seeks to impose the least possible additional bureaucratic burden both on them and on the US exporters and the US Government. Authority for blanket retransfer of, for example, Category VIII(h) items would be helpful.

We suggest, to simplify this assessment, that a list is needed categorising items to be transferred to the CCL by USML category.

### **EAR and “Defense Services”**

Clarification is also needed with regard to the provision of a service by a “US Person” to an overseas customer where this service relates to EAR technology being incorporated into a military platform, unmodified and even sometimes without access to the relevant technical data in relation to the final platform. Is this really, strictly speaking, tantamount to the provision of a “Defense Service”, and, thus, subject to the ITAR, as some in the US Government appear to imply? Would it make any difference, in the above scenario if the “US Person” did have access to the technical data in relation to the final military platform? Authoritative clarification on this issue is needed.

It should be stressed that confirmation of this policy would mean that services provided in support of EAR technology would not only be subject to ITAR themselves, but, pursuant to ITAR 124.8(5), could render the entire foreign product subject to ITAR, a major deterrent to the ECR objective of encouraging more use of US-origin components.

### **Non-US Companies**

Clarification and consistency, especially on definitions, are essential. It is essential for this to be produced, as, otherwise, both Industry and the Bureau of Industry and Security could well face a huge additional, but nugatory, administrative task, if this is not done right. Overseas companies must be given the tools to assist them in verifying the control status of an item in their inventory.

We applaud the State Department's commitment to the proposed control reforms and hope that the above comments may assist the US State Department in its endeavours on this. We strongly believe, however, that without considered support and guidance, some of what is being proposed may be running counter to the fundamental aims and aspirations behind the ECR initiative.

Regards  
Brinley Salzmänn

Brinley Salzmänn - Secretary, EGAD

August 3, 2012

U.S. Department of State  
Bureau of Political-Military Affairs  
Department of Defense Trade Controls Policy  
2401 E Street , N.W.  
Washington, D.C.  
[www.regulations.gov](http://www.regulations.gov) or  
[DDTCResponseTeam@state.gov](mailto:DDTCResponseTeam@state.gov)

**Attention:** Ms. Candace M.J. Goforth, Director Office of Defense Trade Control Policy

**Subject:** RIN1400-AD22 Export Control Reform Transition Plan

Dear Ms. Goforth:

The Aerospace Industries Association of Canada (AIAC) is a not-for-profit organization advocating on aerospace policy issues that have a direct impact on aerospace companies in Canada. On behalf of its members, AIAC wishes to submit the following comments regarding the proposed rule referenced above.

The proposed rules on the Transition Plan for the phased implementation that will transition items from the US Munitions List (USML) to the Commerce Control List (CCL) are welcomed by AIAC. It is our understanding that the Transition Plan is intended to minimize undue compliance burdens on the defense industry. The challenges of implementing a Transition Plan that meets both the national security and economic interests of the United States (US) is an immense undertaking and requires thoughtful consideration of potential impacts for all stakeholders including those in ally nations such as Canada to ensure the new rules are no more onerous for all stakeholders and do not encourage foreign manufacturers and customers to design-out U.S. content from their end-items to avoid burdensome licensing requirements.

While the complexity of the proposed Transition Plan is appreciated, there are some areas of concern we wish to bring to your attention. These include 1) transition of USML items covered under ITAR agreements to the CCL "600 series", and 2) Commodity Jurisdiction Determinations.

## 1) Transition of USML items covered under ITAR agreements to the CCL “600 series”

DDTC’s proposed transition plan for agreements approved prior to the date of relevant final rule publication is that they will “remain valid until expired, unless they require an amendment, or for a period of two years from the effective date of the transition, whichever occurs first. Any activity conducted under an agreement will remain subject to all limitations, provisos and other requirements stipulated in the agreement.” AIAC finds that this plan is clear, understandable and logical.

However, what is less clear is whether the Transition Plan addresses the regulated scenario of the continued compliance of foreign dual and third country nationals (DTCN) previously approved under 124.8(5), 124.16 or 126.18 of ITAR agreement provisions at time of transition of coverage from the ITAR agreement to a BIS approval. The main concern is that the proposed rules by BIS under License Exception STA only allows the reexport or in-country transfer of 600 series technology to 36 countries (mostly NATO countries) and prohibits access to foreign nationals from U.S. embargoed countries in the event current EAR determinations of foreign nationality, wherein most recent citizenship or permanent residency held determines nationality, are not maintained. Moreover, it appears foreign nationals from countries other than the 36 STA countries excluding US embargoed countries would need separate deemed reexport license approvals from BIS. Given BIS procedures of obtaining deemed reexport licenses for foreign nationals, the proposed maximum two year time frame to transition deemed reexport approvals from ITAR to EAR may be unrealistic and overly burdensome for US and foreign companies and governments whose foreign national employees are already approved under current ITAR agreements. This potential gap in coverage for foreign DTCNs may be problematic for US and foreign stakeholders alike and cause undue compliance burdens.

Given this likely compliance issue during the transition period, **AIAC recommends that DDTC include in its final rule on the Transition Plan language that helps address this situation.** For example, in a proposed new subsection under “Technical Assistance Agreements, Manufacturing License Agreements, and Warehouse and Distribution Agreements”, an additional paragraph could be added as follows: “Dual and third country nationals (DTCN) authorized under agreements approved prior to the date of relevant final rule publication will remain valid until expired, or until similar authorizations are obtained by the Department of Commerce.

## 2) Commodity Jurisdiction Determinations

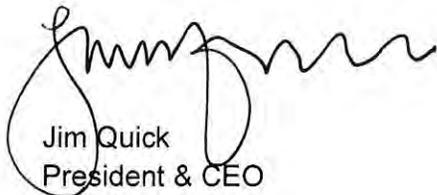
AIAC appreciates the proposal that “previously rendered commodity jurisdiction (CJ) determinations for items deemed to be USML, but that are subsequently transitioning to the CCL pursuant to a published final rule, will no longer be valid after the transition date. However, the proposed rules are silent in the treatment of items rendered as

under Commerce jurisdiction in CJs issued by DDTC. Given this gap and potentially related compliance burdens, **AIAC recommends that parts and components previously subject to a DDTC CJ that determined such part and component was under the jurisdiction of the US Department of Commerce remain valid even when the same items are transferred to the CCL “600 series”.**

In particular, if a part or component was determined to be under DOC jurisdiction in a DDTC CJ, the “specially designed” definition should not be applied to such component and parts whereby the control of such parts and components may return to ITAR controls. In this regard, **AIAC recommends that proposed paragraph (b)(3) should also include a new sub-item (iii) to allow for commodities that have been determined by DDTC as Commerce-controlled items in a commodity jurisdiction in order to not revert back to ITAR controls and be subject to the “specially designed” catch-all.** Text for proposed paragraph (b)(3)(iii) for the Department to consider could be along the lines of: “Is determined as subject to the Export Administration Regulations pursuant to a Commodity Jurisdiction issued by DDTC.” In addition, (b)(3)(iii) could also require CJ documentation as is proposed in §120.41 (b)(4)–(5).

On behalf of its members, AIAC wishes to thank you for the opportunity to comment on this important proposed rule. Please feel free to contact us if you have any questions about these comments.

Sincerely,



Jim Quick  
President & CEO



August 6, 2012

*Sent via email to: [DDTCResponseTeam@state.gov](mailto:DDTCResponseTeam@state.gov)*

Directorate of Defense Trade Controls  
Office of Defense Trade Controls Policy  
ATTN: Regulatory Changes—ECR Transition Guidance  
Bureau of Political Military Affairs  
U.S. Department of State  
Washington, DC 20522-0112

**RE: Federal Register: June 21, 2012 (Volume 77, Number 120)  
Public Notice 7927**

**Export Control Reform Transition Plan**

Dear Sir or Madam:

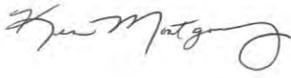
TechAmerica would like to thank the Department of State for the opportunity to comment on the proposed implementation plan for defense articles and defense services that will transition from the jurisdiction of the Department of State to the Department of Commerce. The intent of this plan is to provide a clear description of DDTC's proposed policies and procedures for the transition of items to the jurisdiction of the Department of Commerce. Please consider the comments listed below when developing the final rule for the implementation plan.

**Licenses (DSP-5, DSP-61, and DSP-73)**

If a Technical Assistance Agreement (TAA) exists for a project under which components formerly requiring DSP-5s have been moved to the CCL, the organization should be allowed to obtain DSP-5s for these components, with an explanation that the request is being made solely to keep the project under the jurisdiction of one agency and process.

Again, TechAmerica would like to thank the Department of State for the opportunity to provide comments on this proposed rule which is part of the President's Export Control Reform initiative. We look forward to reviewing additional rules as they are published.

Sincerely,

A handwritten signature in black ink, appearing to read "Ken Montgomery". The signature is fluid and cursive, with a large, stylized initial "K" and "M".

Ken Montgomery  
Vice President, International Trade Regulation



Northrop Grumman Corporation  
Export / Import Shared Services  
2980 Fairview Park Drive  
Falls Church, VA 22042

August 6, 2012

U.S. Department of State  
Bureau of Political Military Affairs  
Department of Defense Trade Controls  
2401 E Street, NW, SA-1  
Washington, D.C. 20522

ATTN: Ms. Candace Goforth  
Director, DTC Policy

SUBJECT: DOS Docket #2012-0020 Transition of Items to the Dept. of Commerce

Dear Ms. Goforth:

Northrop Grumman Corporation submits the following comments to the above proposed Implementation plan to transition certain items from Department of State to Department of Commerce jurisdiction:

**1) Transition Date/Effectivity**

The proposed transition will require both significant analysis and planning for companies to assure coverage for ongoing export activities. In most cases, at least for major defense contractors, most activities currently covered by State Department Agreements and Licenses will have some portion remaining subject to State Department requirements, and some portion transitioning to Commerce. For each of the active approvals, a further analysis will be required to identify the portion that will transition (and require in some cases more than one analysis as multiple USML Categories are identified in the approval), changes will be required to multiple databases containing the jurisdiction and classification information, and in many cases a corollary Department of Commerce license will be required for transitioned items.

A 45 day transition period for submission of amendments and support licenses is not practical given the number of system changes and notifications, and frequency of changes over the life of the approvals. The items in our product portfolio that are proposed for transition include some items subject to MT controls at State or Commerce, thus ineligible for Commerce License Exception STA.

The transition period of 45 days from the effectivity date for each USML Category will not provide sufficient time to obtain new supporting documents from foreign parties and Commerce Department licenses for those items, causing unnecessary disruption without cause for existing authorized activities. While we understand that the Department will consider the authorization in effect for two years following publication of the final rule, from a practical perspective, the result

is not a validity period of two years given the number and type of amendments relating to authorizations that are issued for minor name changes, additions of freight forwarders, etc. which, as proposed, would negate the two year period. For these reasons, we recommend that the proposed 45 day period be extended to 180 days. We also recommend that existing authorizations remain valid for the full term as originally approved by the Department of State unless ALL items covered by the authorization have transitioned to Department of Commerce, in which case they are valid for a period of two years from the final rule, and may be amended as permitted by Department of State regulations for the two year period.

Finally, as the majority of industry are using market software to support export & shipping compliance, updated solutions to support the changes will be required. It is unclear how quickly such changes can be accomplished. Consultation of these software developers is highly recommended and should be considered prior to establishing firm transition date requirements to assure adequate ability to update the requisite infrastructure.

## 2) **Commodity Jurisdiction Determinations**

We do not support any retroactive review requirements for Commodity Jurisdictions (CJ) that were previously reviewed and adjudicated as Department of Commerce controlled and specifying a particular ECCN or EAR99. Such items were already reviewed by the Departments of State, Commerce & Defense and determined or transitioned to Commerce Department control. It should be clarified in publication of the final rule that exporters do not need to reassess those items previously adjudicated via the CJ process, unless the item was determined to be subject to Department of State control and the final rules regarding the specific USML category may now identify the item as subject to Department of Commerce control as a “600 series” item.

To that end, we recommend inclusion of the following language with regard to previously issued CJ determinations:

Previously issued CJ determinations from Department of State for items determined to be subject to the jurisdiction of the Department of Commerce shall remain valid, and parts, components, accessories and attachments for the item covered in the CJ determination, shall also remain subject to Department of Commerce jurisdiction. Further, Classifications of such items as identified in the CJ determination shall also remain valid.

## 3) **Reexports/Re-Transfers**

Foreign recipients of items previously controlled by the State Department are not in a position of knowledge or expertise to properly re-classify such items based on the changes in U.S. regulations. For any existing Department of State license that contains a re-transfer provision or approval (e.g. distribution territory), the approval should remain valid for re-transfers and reexports by authorized foreign recipients until the expiration of the Department of State authorization.

Similarly, items eligible for re-transfer/ reexport without Department of State prior authorization under §123.9(e) of the International Traffic in Arms Regulations, should remain eligible and be authorized under §123.9(e) for a period of 2 years from the effectivity date of the final rule

moving the items to Commerce jurisdiction. After such time, prior authorization would be required from the Department of Commerce or determination the item was eligible for License Exception APR §740.16.

#### 4) Specific Request for Comments

In response to the five questions the Department specifically requested comments by the public, we offer the following information:

a) *Question #1 Is the transition plan clear and understandable? Is it logical?*

The transition plan as proposed is clear but our comments are focused on the practical implications of the change from an industry perspective. These changes, the most encompassing proposed since the inception of export controls, require infrastructure changes to automated systems, internal compliance processes and training. For large corporations, 45 days, or until the next action within two years, is not sufficient time to implement these changes without significant disruption to existing authorized export activity. We strongly request the Department to solicit further details from industry and software developers to determine an appropriate transition timing deadline.

b) *Question #4 Recognizing that this regulatory transition will unavoidably create challenges for industry, does the plan as presented effectively minimize these challenges?*

We are concerned that the timelines outlined in the proposed rule are unrealistic in terms of industry implementation of the proposed changes. Unless the process for transition is revised, or the timeline adjusted, we believe the plan as presented does not effectively minimize the challenges.

c) *Question #5 Does the plan impose undue burden on industry, and if so, are there any suggestions that will help mitigate them?*

In addition to commenting on specific risks or burdens associated with implementation, we have identified within this response suggested language to mitigate issues, and assure the transition does not increase the potential risks of non-compliance for the U.S. exporter.

If you require any clarification or further discussion on the information within this submission, please contact me at (703)280-4056 or [beth.mersch@ngc.com](mailto:beth.mersch@ngc.com) and I will engage the appropriate individuals.

Sincerely,



Mary Elizabeth (Beth) Mersch  
Director, Export Operations

August 6, 2012

To: ddtcresponseteam@state.gov

From: Alan J. Ramsbotham, Jr., [ramsboth@oei-tech.com](mailto:ramsboth@oei-tech.com) Phone 540-775-2033

Subject: Export Control Reform Transition Plan

The policy statement provides a clear and readable description of the Department of State's plans for implementation of procedures for the transition of jurisdiction of certain ITAR items to the Department of Commerce.

With respect to the specific questions posed:

1. Within the limited context of procedures and policies under the purview of Department of State, the transition plan appears clear, and logical.
2. While the intent of export control reform has been to make clear and unambiguous distinctions between ITAR and EAR jurisdictions, the language of proposed rules published for public comment incorporates extensive cross-referencing between the ITAR and EAR. This will result in scenarios that, while beyond the scope of this announcement, will affect its practical implementation.
3. and 4. For the reason cited in 2, above, export control reform during the transition period has significant potential for negative effects on compliance with existing export law. A specific concern is that the piecemeal approach to implementing rules on a category-by-category basis as they become available will generate confusion and conflicts. Exporters of military systems whose sales contracts include maintenance parts and services falling will effectively be forced to develop and maintain two parallel export administration functions to ensure compliance. This is inherent in the administration's approach to ECR, and beyond the scope of this transition plan's ability to affect beneficially.
5. The intent of ECR is laudable. However, as a practical matter, the proposed implementation of positive lists greatly increases the sheer volume of regulatory language with which an exporter must contend. The continued reliance on "specially designed" effectively requires exporters to review two lists to determine whether proposed exports conform to the specific form, fit, and function of items described in both positive lists. In the case of military sales and repair parts, which may be identified only by part number, the added administrative burden will be significant. Again, this is an issue that will seriously affect implementation of the proposed policies, but which is beyond the scope of this announcement.

With regard to suggestions to mitigate this problem: The course of export control reform in general appears to have been firmly established. There are, however, some practical steps that can be suggested to ameliorate some of the challenges.

1. The burden of having to maintain parallel systems can be ameliorated by waiting until all

Categories have been finalized. If there are special cases where action is needed to avoid significant damage to US national industrial interests (satellites may be a case in point) consideration should be given to dealing with those during the interim on a case-by-case basis.

2. The need for added specificity required by a “positive list” inherently increases the volume and complexity of the regulatory language with which exporters will have to deal. Thus any reduction in the scope of the basic ITAR items will be of significant benefit. At the same time, it is recognized that ITAR controls serve national interests beyond the national security concern posed by direct threats to US forces. The US has responsibilities with respect to other nations and regional stability. (Trade in small arms is a clear case in point.) Export controls have an essential role in meeting these responsibilities.

A practical suggestion for consideration is to limit the scope of the basic USML to weapons, means of delivery (military platforms), specially designed mission equipment essential for the effective use of weapons, and countermeasures and protective equipment for degrading the effectiveness of such systems—in other words, what may be properly referred to as direct implements of war. Examples of products that would be categorically transferred to the CCL under such an approach would include military computers, support and engineering equipment, and general purpose telecommunications.

This is not to assert that there are no national security risks associated with the sale and use of such equipment. There are situations where hardware has the potential to reveal either intelligence sources or critical limitations of a US system: As examples:

- (a) One can envision real-time digital signal processing applications that might require the use of an ASIC optimized for specific signatures, access to which would reveal intelligence collection methods or sources, and
- (b) In isolated cases the performance parameters of dual-use commercial products may disclose system limitations. For instance, knowledge that a specific commercial microwave power amplifier is being used in a specific radar system may allow an adversary to infer critical operating characteristics (for example, effective radiated power, frequency, and bandwidth) of the system.

In both cases, use of military classification, not export control, is the appropriate protective measure.

In the case of 4(b), export controls are categorically unsuited. The exporter of a decontrolled civil product for civil end uses cannot be presumed to have knowledge of its uses in a Classified system. Further, in such applications it is not the hardware but information associating the hardware with a particular military system that warrants Classification. This creates a classic “Catch-22.”

3. Finally, the efficacy of any policy and procedures will be constrained and limited by the continued reliance on “specially designed,” in the specifications of controlled items. As

provided in separate comments on the relevant proposed rules, the current definitions stand to greatly exacerbate the problems faced by industry. If “specially designed” cannot be eliminated as a defined term, its definition and use should be modified to limit its use to scenarios where its intent is clear and unambiguous. Two examples of where such clarity may exist follow

- a. Where functional requirements for the item are exclusively military—that is, the product is, or is a component used only in, products listed on the USML; or
- b. In the case of dual-use products, the item has specific characteristics of form, fit, and functional performance, such that it is uniquely required for a product controlled for national security on the USML or CCL. Use of “required for” limited to specific, uniquely identifiable conditions, might ameliorate many issues.

In the case of products meeting the criterion in b., being uniquely required for implementing a militarily significant capability is a necessary, but insufficient condition for control. Items should not be controlled (for national security purposes) unless they provide significant national security benefit. The issue of foreign availability is already addressed in enabling legislation. Where components have been designed to be used in both controlled and uncontrolled items, licensing should be required only for those components whose availability is necessary and sufficient for an end-user to replicate the controlled end-item/system.

A closing example of a practical scenario that export controls need to address:

By way of brief qualification, my professional experience comprises over 40 years in military system design and technology security, several years as an export case reviewer for the Navy. A key criterion for making a recommendation for approval or denial was whether the end-user had a legitimate need for the item in question. I encountered numerous cases of proposed exports of components that, by design, were inherently limited by form, fit, and function to use in a specific system, that the proposed recipient did not. In many of these cases the exporter was not the original manufacturer, but another US company. In some cases the US company owned the equipment and had a working relationship of some sort with the proposed recipient through which the foreign recipient had become aware of the system. In others, the exporter was simply a distributor.

In such cases the only discernible benefit to the recipient for reverse engineering of some critical design capability.

This is but one of a number of conceivable operational “tactical” scenarios. The present announcement is reasonably clear within the narrow context of DDTC regulatory policies and procedures. However, from a national security standpoint it is not at all clear--from what has been published regarding export control reform for public comment to date--that adequate consideration has been given to the strategic objectives for which national security export controls are required or to the broader range of tactical scenarios within which those objectives must be pursued.



August 6, 2012

U.S. Department of State  
Office of Defense Trade Controls Policy  
PM/DDTC, SA-1, 12th Floor  
2401 E Street, NW, (SA-1)  
Washington, D.C. 20037

Subject: ECR Transition

Reference: DOS-2012-0020

Dear Ms. Goforth:

The Aerospace Industries Association (AIA) submits the following comments for the aforementioned proposed rule. AIA appreciates the effort by the Administration to address this issue. AIA commends the Administration's efforts on export control reform and agrees with the overall proposed structure for a smooth and seamless transition. However, AIA believes that additional clarification is required to ensure these concepts are practical once proposed control list reforms are finalized.

**Congressional Notification Requirements:**

AIA does not support the proposed Congressional Notification requirement for USML items approved for transfer to the "600 series." As a threshold matter, the Export Administration Act ("EAA"), as currently authorized by the International Emergency Economic Powers Act ("IEEPA"), does not specifically authorize the Congressional Notification requirements, as proposed.

That stated, we acknowledge the discretion of the U.S. Government to craft regulatory language to implement such a requirement in the interests of national security, should it choose to do so. Given the fact that the Administration's review and proposed transfer of certain items from the USML to the CCL, with the concurrence of Congress under the AECA's 38(f) provision, is predicated on the premise that these items are not of critical importance to U.S. national security, we strongly urge removing the proposed Congressional notification requirement.

From a practical standpoint, duplicate notifications will result in significant transaction delay and cost to both industry and government, without increasing transparency regarding defense trade for Congressional stakeholders.

**Rationale:**

A single contract could include the sale of one or more complete items, as well as additional items for shipping, storage, testing, or other purposes. In such situations, the relevant ITAR application will normally require Congressional Notification, due to the high dollar value of the contract. Companion EAR license applications for parts and components would be related to the same contract. Therefore, EAR applications could inadvertently be subject to identical Congressional Notification requirements. This double-notification requirement would be an unnecessary regulatory burden for both government and industry.

We ask that both the Departments of State and Commerce reconsider the Congressional Notification language in the BIS proposed rule and that the provision be amended so as to base the notification requirement on the dollar threshold of the license application, rather than the contract value. In this manner, parts and components subject to the EAR would not be inadvertently captured. The Departments should also specifically indicate that there is no expectation for EAR applications to be subject to notification requirements in the circumstances in which the same platform has been notified pursuant to an ITAR application (or is being notified concurrently.)

**Dual Licensing/Compliance Requirements for Defense Sales:**

AIA members have previously raised significant concerns about the new procedures, as proposed in this rule and the separate proposed rule establishing a jurisdictional methodology based on a concept of “Specially Designed” (see AIA comments submitted on August 3, 2012), which will create dual-licensing and compliance requirements for a single defense sale. While the proposed rule seeks to ensure that existing ITAR license exemptions are not eliminated when moving an item to the CML, it does not address the fundamental problem with requiring multiple licenses and item jurisdiction determinations for a single defense transaction.

The proposed State and Commerce rules should authorize the use of comprehensive ITAR licenses (e.g., DSP-5, DSP-73, etc.) for the exports of CML or CCL items that are parts and components of ITAR defense articles (i.e., end-items and systems), in lieu of obtaining additional authorization(s) from the Department of Commerce, if these parts and components are included as part of a sale of a USML-controlled defense article. This would be in keeping with current industry export licensing practice and would eliminate the burden on the U.S. Government and industry associated with redundant licensing and compliance requirements - without adversely affecting national security interests. This approach would also be in keeping with the original intent of Export Control Reform – to create one list, licensed by one agency. Where it is possible, the U.S. Government should seek to implement that objective, not create multiple new license requirements and compliance burdens for U.S. defense trade with our allies and partners abroad.

**Rationale:**

If implemented in its current form, a U.S. company that is seeking to sell USML Category VIII military aircraft to a foreign government, including some assembly abroad, would need authorization from the Department of State. That sale and assembly, however, could include thousands of parts and components that would be controlled separately under the CML. Although

control on the CML might expedite future sales of parts and components to this approved program, the initial transaction that currently requires only a single authorization from the Department of State would now require multiple licenses from two agencies. This will not make U.S. defense licensing more efficient.

Moreover, this dual licensing framework would require a company to parse out potentially thousands of small parts and components for individual listing on a Commerce license. Each one of these items would need to be individually evaluated to determine whether it is a CCL, CML or USML item, increasing the complexity of the existing licensing requirements. Under current USML processes, these parts and components are authorized for export as general categories of items (e.g., "Category VIII(h) parts and components of the hydraulic/mechanical/electrical system.")

A new dual-licensing regime would impose very significant additional compliance burdens and costs on international defense and aerospace trade under both the Foreign Military Sales (FMS) and direct commercial sales (DCS). As such, this change would be difficult to characterize as "reform." The proposed Department of Commerce rule accompanying FRN RIN 06494-AF65 "Transition Rule" does provide a note that states: "The export of items subject to the EAR that are sold, leased, or loaned by the Department of Defense to a foreign country or international organization must be made in accordance with the FMS Program carried out under the Arms Export Control Act." (See p. 37538 Note to (b)(2).) If the intent of this note is to declare that the authorization for FMS cases under 22 CFR 126.6(c) will apply to both USML and CML items, then that should be articulated clearly and explicitly in both the Department of Commerce and Department of State proposed rules. However, even if that is the intent, this exception would not apply to, or lessen the compliance burdens and costs associated with, Department of State authorizations for DCS.

During the list review process, the Departments of Commerce and State considered the creation of a license exception that would authorize CML items accompanying an ITAR-licensed export. AIA would also support this approach as a solution, if it was effectively crafted to address the duplicate license requirements and additional compliance burdens discussed above.

#### **Temporary Exports/Imports**

AIA recommends the following language be added to the proposed rule:

*"Licenses issued by the Department of State prior to the effective date of the final rule for each revised USML category for the temporary export or import of items transitioning to the CML or CCL will remain valid until expired or returned by the license holder, whichever occurs first. Any limitation, proviso or other requirement of the license will remain in effect.*

*Following the effective date of the expiration or conclusion of the ITAR license, any items that were exported under the ITAR, but subsequently transitioned to the EAR, should be treated as such and any requests for post-transition reexports or retransfers should be submitted to the Department of Commerce, as required by the EAR."*

#### **Rationale:**

The expiration of ITAR temporary licenses, based on the need for an amendment or within a two year period, would cause a substantial additional burden on defense programs for sustainment (e.g.,

temporary transfer of items requiring repairs) and production (e.g., transfer of temporary test and/or production tooling). This would necessitate industry assessing thousands of active temporary licenses to determine jurisdictional status of individual items. Conducting these assessments as licenses expire (e.g., four years) or as they are returned by the license holder would be a more manageable process, and accomplishing the same objective. There is no risk to national security with this proposal, as temporary licenses require all hardware to be returned to its origin.

### **Reexport/Retransfer:**

Reexport and retransfer of USML hardware is also a concern for our members. Licenses, agreements and other authorizations issued by the Department of State prior to the effective date of the transition regulation that authorize the reexport or retransfer of items (and related technical data) transitioning to the CML should be “grandfathered” without expiration.

Rationale: Foreign recipients of US origin hardware may not be in a position to correctly classify post-transition reexports or retransfers of hardware and technical data originally received as USML-controlled. For example, a foreign party that purchases a defense article, authorized for export under a DSP-5 license “in furtherance of” an agreement, which permitted reexport authority to a third party, may not understand that the retransfer authorization is no longer valid, if the hardware moves to the CML. Under Technical Assistance and Manufacturing License Agreements, the Department of State has authorized the sublicensing and reexport/retransfer of literally millions of items and related technical data to many thousands of foreign persons. Accordingly, the retransfer after the effective date of the items moving to the CML would potentially be a violation for which the original US exporter is accountable, in accordance with 127.1(c). Finally, if the USG has already conducted a comprehensive review and issued an authorization for such reexport or retransfer, it should not be required to repeat the process.

### **Existing Authorizations**

AIA recommends adding the following language:

*“Authorizations (DSP5, Part 124 Agreements) for items transitioning to the CML that are issued in the period prior to the date of final rule publication for each revised USML category will remain valid until expired, or returned by the license holder, whichever occurs first. Any limitation, proviso or other requirement imposed on the DDTC authorization will remain in effect. During the transition period, exporters may continue to identify the original USML category delineated in the DDTC authorization on all required shipping documentation and AES filings.*

*Applications and amendment requests for items transitioning to the CML that are received by DDTC prior to final rule publication for each revised USML category will be adjudicated up until the effective date of the rule, unless the applicant requests that the application be Returned Without Action. New application requests for items moving to the CCL which are received after the effective date will be Returned Without Action with instructions to contact the Department of Commerce.”*

Rationale:

This approach will allow exporters to evaluate the impact of the USML to CML change and assess on a case-by-case basis whether to continue operating under valid authorizations or transition to the EAR.

Some AIA members have thousands of active agreements at any one time. The new requirement to identify the jurisdiction for every item in an agreement would preclude amendment and the swift consideration of a new authorization, likely resulting in contractual issues, including potential work stoppage. This in turn would undermine the reliability of the United States to deliver defense platforms and systems to our allies and partners in a timely and efficient manner. Given the time and effort to secure the initial ITAR authorization, it may in fact be more efficient for the exporter to continue operating under the authorization rather than submit a duplicate request under the EAR.

In most cases, AIA estimates that transitioning to the EAR will significantly streamline the export process, particularly when eligible for EAR license exceptions (e.g., STA, RPL, TMP, etc.). But in some cases (e.g., if ineligible for an EAR exception), AIA member companies should be permitted to continue to export under existing DoS approvals throughout the life of the authorizations. This would provide a natural phasing in of the new system without costly and time-consuming base-lining/realignment efforts that will disrupt international trade and the defense supply chain.

If DDTC needs a firm date at which transition would be completed, we suggest four (4) years as the appropriate transition period, as this reflects the current standard authorization from the Department of State.

**Commodity Jurisdiction Sanctity Recommendation:**

AIA recommends adding the following sentence to address validity of existing Commodity Jurisdiction (CJ) determinations:

*“Previously rendered CJ determinations for items deemed to be CCL, shall remain valid and their parts, components, accessories and attachments covered in the CJ determination shall remain subject to Commerce jurisdiction. Classifications of such items under the CCL shall also remain valid after the transition date.”*

Rationale:

The suggested addition will preserve the validity of previous CJ determinations. This is particularly important for situations where a precedent CJ included a CCL classification in addition to a jurisdiction assessment. Without this clarification, exporters may suddenly discover items previously assessed as “EAR99”, or other CCL entry, would transition to the CML with corresponding increased levels of control. Further, this note will clarify that exporters do not need to start again with assessments of products that were subject to prior CJs and would eliminate the potential for parts and components of an end item that was previously determined to be Commerce pursuant to a CJ from potentially being subject to the ITAR.

**Entry Into Force:**

The effective date for a final version of this rule should be of at least 180 days from its publication.

**Rationale:**

The proposed rule would require companies to undergo multiple implementation changes (e.g., classification changes, marking requirements, tool updates, training, and licensing) that require time, thought and substantial resources. A delayed effective date for this rule is fully consistent with the approach that has been taken, for example, by the Bureau of the Census in rules that have a wide impact across the exporting community with the processing of hardware shipments through U.S. Government interfaces, such as AES. Without sufficient time to implement the complicated and resource-intensive requirements of the proposed rules, U.S. companies will be unable to comply and the chances for inadvertent compliance issues increases.

AIA continues to support the Administration's efforts on export control reform, but our members have concerns about the proposed transition process as indicated above. Without modifications to the proposed Department of State and Department of Commerce transition rules, the overarching control list reform effort will not have the intended effect of making the U.S. export control system more efficient and effective and may, in fact, have adverse effects on U.S. defense and aerospace trade. Accordingly, we encourage the Departments of State and Commerce to consider these potential ramifications, and the recommended changes proposed in this letter, before publishing the export control reform transition plan in final form.

AIA appreciates the opportunity to provide comments on this proposed rule. If you have any questions or require additional information concerning this submission, please contact the undersigned at 703-358-1070 or by e-mail at: [remy.nathan@aia-aerospac.org](mailto:remy.nathan@aia-aerospac.org).

Best regards,



Remy Nathan  
Vice President, International Affairs  
Aerospace Industries Association

Lauren Airey

Director, Trade Facilitation Policy

August 6, 2012

Ms. Candace M. J. Goforth  
Acting Director, Office of Defense Trade Controls Policy  
Department of State  
Washington, DC 20520

Re: Export Control Reform Transition Plan (DOS-2012-0020)

*Via email: DDTCTeam@state.gov*

Dear Ms. Goforth:

The National Association of Manufacturers (NAM) welcomes the opportunity to comment on the proposed implementation plan for defense articles and defense services that will transition from the jurisdiction of the State Department to the Commerce Department.

The NAM is the nation's largest industrial trade association, representing small and large manufacturers in every industrial sector and in all 50 states. Our members play a critical role in protecting the security of the United States. Some are directly engaged in providing the technology and equipment that keep the U.S. military the best in the world. Others play a key support role, developing the advanced industrial technology, machinery and information systems necessary for our manufacturing, high tech and services industries. The NAM has long been a staunch advocate of rational export control policies that address evolving national security concerns and modern business practices.

We applaud the Administration's ongoing efforts on export control reform. Further, we believe that the structure outlined in this proposed rule will provide a smooth transition to an updated export control list. However, we believe that clarifications are required to ensure the new controls are feasible to implement, to comply with and to enforce.

We are concerned that the proposed transition plan would establish a Congressional notification requirement for U.S. Munitions List (USML) items approved for transfer to the Commerce Control List (CCL) "600 series", often referred to as the Commerce Munitions List (CML). Unlike the Arms Export Control Act (AECA), the Export Administration Act (EAA) – as currently authorized by the International Emergency Economic Powers Act (IEEPA) – does not require a Congressional notification requirement for changes to the Export Administration Regulations (EAR). The Administration's export control reform initiative has focused primarily, so far, on the effort to evaluate the USML and transfer certain items to the CCL after notifying Congress, per the AECA's 38(f) provision. The export control reform initiative is grounded on the principle that those transferred items are not critically important to U.S. national security. Therefore, the NAM does not support establishing a Congressional notification requirement for items on the CML. The technical specifications for transferred items have been vetted for transfer from the USML, and Congress was appropriately notified before the transfer. We recommend removing the CML Congressional notification language from the proposed rule.

Alternatively, we recommend amending the provision to activate the notification requirement based on the dollar threshold of the license application, rather than the contract value. In this manner, parts and components subject to the EAR would not be inadvertently captured. Follow-on shipments of CML parts and components not identified in the initial transaction should not be subject to follow-on notifications in the future. We strongly recommend, prior to establishing a final implementation plan, the current notification requirement be removed.

Manufacturers have also raised concerns that new licensing procedures, as proposed in this rule, will create dual-licensing requirements for a single defense sale. While the proposed rule appropriately ensures that existing ITAR license exemptions are not eliminated when an item transfers to the CML, the proposed rule does not address a situation where multiple licenses might be required for a single defense transaction. The NAM recommends the Departments of State and Commerce authorize the use of ITAR licenses (e.g., DSP-5 and DSP-73) for the export of CML and CCL items that are parts and components of ITAR-controlled defense articles, rather than requiring additional licensing from the Commerce Department, if part of an initial sale. This would reduce redundant licensing requirements without adversely affecting national security interests, while maintaining the original intent of the President's export control reform initiative. We urge the Department to mitigate, to the extent possible, compliance burdens associated with shipping U.S. defense platforms to our allies and partners abroad.

A U.S. company that exports a military aircraft to an allied nation needs authorization from the State Department. That sale might include thousands of parts and components that could be controlled separately under the new CML. Flexibility provided by the CML might expedite future sales of parts and components to this approved program, but the initial transaction that previously required a single authorization would now require multiple licenses from two agencies. Moreover, a dual-licensing framework would require a manufacturer to analyze potentially thousands of small component parts for individual listing on a Commerce license. Each one of these items would need to be individually evaluated to determine whether it is controlled on the CCL, CML or USML. Under current licensing requirements, these parts and components are authorized for export as general categories of items. A predictable, efficient and transparent licensing system should minimize situations like this.

Licenses for temporary import/export and export/import (e.g., DSP-61 and DSP-73) should extend until they either expire or are returned by the applicant holder. The proposed two-year expiration would have an adverse impact on many previously approved programs and sustainability efforts. The administrative burden, coupled with potential production delays and cost increases, of reviewing hundreds of temporary licenses to assess the jurisdictional status of individual parts and components or production and test equipment would likely far outweigh any perceived benefits of obtaining new licenses.

The re-export and re-transfer of USML hardware is also a concern for manufacturers. Foreign recipients of U.S.-origin hardware will not be in a position to correctly classify post-transition re-exports or re-transfers of hardware originally received as USML items. For example, a foreign party that purchases a defense article under a DSP-5 license "in furtherance of" an agreement, which permitted re-export authority to a third party, may not understand that the re-transfer authorization is no longer valid if the hardware moves to the CML. Accordingly, the re-transfer after the effective date of the hardware moving to the CML would potentially be a violation for which the original U.S. exporter is accountable, in accordance with 127.1(c). We urge the Department to consider solutions to this scenario.

We recommend, during the transition period, that the Departments of State and Commerce allow exporters to continue identifying the original USML category delineated in the State Department authorization on all required shipping documentation and AES filings. This will allow exporters to evaluate the impact of the transfer from the USML to CCL and to assess whether to continue operating under valid authorizations or transition to the EAR on a case-by-case basis. Some large manufacturers have thousands of active agreements, and a requirement to identify the jurisdiction for every item in an agreement would preclude amendment and the swift consideration of a new authorization. This could result in contractual complications, including potential work stoppage. That scenario would, contrary to the intent of the export control reform initiative, undermine the reliability of U.S. manufacturers to efficiently deliver defense platforms and systems to our allies and partners abroad. In most cases, manufacturers who transition to the EAR will experience significant streamlining in their export process. Manufacturers would like the flexibility, though, of continuing to export under existing State Department licenses through the duration of the authorization. If a firm deadline for the transition is necessary, we recommend four years.

We further urge the Department to clarify that previously rendered commodity jurisdiction (CJ) determinations for items deemed to be controlled under the EAR will remain valid and subject to Commerce Department jurisdiction. This is particularly important for situations where a CJ included a CCL classification in addition to a jurisdiction assessment. Without this clarification, exporters may discover items previously assessed as EAR 99 have transitioned to the Commerce Munitions List.

Finally, we recommend the effective date for a final rule should be at least 180 days from its publication. Exporters will need to undergo extensive systematic changes (e.g. classification changes, software updates and training) that will require time and resources, and a reasonable effective date will facilitate compliance.

The NAM appreciates this opportunity to provide comments on the proposed rule regarding the proposed implementation plan for defense articles and defense services that will transition from the jurisdiction of the State Department to the Commerce Department. Please feel free to contact us if you have any questions about these comments.

Thank you,



Lauren Airey

**From:** Zimmer, Justin (US SSA) [<mailto:justin.zimmer@baesystems.com>]  
**Sent:** Monday, August 06, 2012 5:15 PM  
**To:** DDTC Response Team  
**Subject:** ECR Transition Guidance - BAE Systems Comments

Dear Response Team:

BAE Systems respectfully submits the following comments on the proposed Export Control Transition Plan published in the June 21, 2012 Federal Register.

If you have any questions or concerns, please contact Mr. Justin Zimmer directly at (703) 907-8345 or [Justin.zimmer@baesystems.com](mailto:Justin.zimmer@baesystems.com)

#### Licenses (DSP-5, DSP-61, DSP-73)

This section addresses Licenses for items transferring to the CCL but it does not specify or address licenses containing both items that transition and items that remain on the USML which can lead to confusion and differing implementations.

- 1) I suggest that the licenses currently referenced be identified as those only for items transition to the CCL.
  - a. Remove all current references to "License applications for items transitioning to the CCL that are received by DDTC prior to final rule..."
  - b. Replace all current references to state "Licenses applications **solely** for items transitioning to the CCL that are received by DDTC prior to final rule..."
- 2) Add paragraphs in this area to address licenses that include both items that transition and items remaining on the USML. Given the impact to the programs, I would suggest licenses containing both items which remain and transition stay valid until they expire and allow for amendments to be made to these authorizations. In other words, if items transitioned are licensed on this type of license which includes items remaining on the USML, industry will have two alternatives.
  - a. Continue to ship under the current license until it expired and obtain amendments if necessary, or
  - b. Obtain a Commerce license and ship the transitioned items under the Commerce authorization and continue to ship the other items under the State authorization.
- 3) The guidance beginning "licensed applications received by DDTC within 45 days following the final rule's publication, but before the rule become effective will be adjudicated only..." is difficult to implement, and leaves a gap.
  - a. Difficult to Implement: It does not allow industry time to fully understand the published rule, review the affected transactions to determine if it can be exported within 45 days, and implement an additional license requirement.
  - b. Gap in Time: In the guidance described, there could be a time gap between the 45 days from publication and the effective date where there is no guidance or plan.

In order to address these concerns, I suggest this section on licenses and license amendments submitted post publication of the rule be rewritten to be 45 days before effective date.

Specifically, "licensed applications received by DDTC within 45 days **prior to** the final rule's **effective date**, but before the rule become effective will be adjudicated only..."

#### *Technical Assistance Agreements*

Currently the guidance states that "Agreement or agreement amendments for items moving to the CCL which are received after the effective date will be Returned Without Action with instructions to contact

the Department of Commerce” However, the guidance does not address agreements which contain both items transitioning to the CCL and items remaining on the USML. I suggest adding the below language to accommodate for this situation without affecting the items remaining on the USML.

“For agreements contain both items remaining on the USML and transitioning to the CCL, there will be a proviso added to the approval advising the applicant to seek authorization from Commerce for the items transitioned to the CCL.”

#### *Regulatory Oversight Responsibilities*

Currently states:

“...license holders must return the Department of State licenses in accordance with ITAR 123.22, and obtain the required Department of Commerce authorization”

Suggestion:

“...license holders must return the Department of State licenses in accordance with ITAR 123.22, **after obtaining** the required Department of Commerce authorization”

The reason for this suggested change is clarifies the guidance in order to prevent a gap in the authorization for export of the referenced items.

We have had some discussion of these documents in the UK. So far as we are concerned, the main issue is that the FRNs place the responsibility on foreign consignees to review USML items in their inventories to determine whether they remain on the USML or are to be transferred to the CCL. This is a potentially gigantic task involving many thousands of legacy items, especially when one considers that many companies have ongoing responsibility for equipment in the hands of the end user, in terms of spares, repairs, upgrades, disposals etc. The current approach to compliance by the US authorities encourages risk minimisation, but it seems to us that foreign consignees, US exporters, and the USG, share a common interest in ensuring that this does not result in a tidal wave of requests for individual CJs and advice on the application in individual cases of the de minimis rules. One can envisage particular problems with the requirement to file a one time report for US technology commingled with foreign technology under the de minimis rule ( see EAR 734.4(d)(3)).

Ideas which the USG might be invited to consider are:

- Publication of a catalogue identifying which USML items by USML category are to be transferred to the CCL- this will help foreign consignees to identify which items are being transferred, and to which ECCN;

- A regulatory obligation on US exporters to state both the control list category of items to their customers, and, for a period, say 2 years, the previous control list category as well, and to respond promptly to requests for classification of legacy items;

- Construction of a website on which US exporters can publish details of reclassified line items, by name, catalogue number, NSN etc;

- Acceptance by the US authorities of blanket reclassification of low sensitivity items by foreign consignees if carried out in good faith, and similar blanket treatment of such items as de minimis if the parameters are met . We also suggest dropping the one time report requirement for commingled technology.

August 6, 2012

Ms. Candace M. J. Goforth  
Director, Office of Defense Trade Controls Policy  
Directorate of Defense Trade Controls  
U.S. Department of State  
2401 "E" Street, NW  
Washington, DC 20037

Subject: "ECR Transition Guidance"

Reference: Federal Register/Vol.77, No. 120/Thursday June 21, 2012  
Export Control Reform Transition Plan: Proposed Policy Statement

Dear Ms. Goforth:

The Boeing Company ("Boeing") appreciates the opportunity to comment on the policy changes proposed by the Directorate of Defense Trade Controls ("DDTC") for implementing an Export Control Reform Transition Plan. Boeing reiterates its support for this export control reform initiative.

Boeing has a number of concerns with the proposed rule, principally regarding the timing and scope of the transition period for new export authorizations. We provide the following comments and recommendations for your consideration.

### **Background**

Boeing has developed an extensive network of systems, tools, and processes to ensure compliance with U.S. export control laws and regulations, which include trade compliance infrastructure, as well as engineering and business systems that include and perform compliance functions. This compliance infrastructure includes enterprise-wide procedures for complying with export and import requirements under the International Traffic in Arms Regulations ("ITAR"), the Export Administration Regulations ("EAR") and the Customs Regulations in support of large numbers of exports and imports. Revising this complex network of compliance and business systems to reflect the changes represented by the U.S. Munitions List ("USML") reform initiative will require significant transition costs, which will include design, engineering and manufacturing tools/systems/databases, compliance processes/writings/training, technical data re-markings, product re-classifications, and extensive coordination with suppliers and customers.

### **Application of the Transition Period**

Conditions imposed by DDTC for the adjudication of license applications during the transition period are, in our opinion, too restrictive. The proposed rule would impose undue burden on industry. As proposed, the rule requires applicants to not only be aware of items transitioning from the USML to the CCL, but to act upon that awareness in the submission of applications to DDTC, *literally the day after*



Additionally, imposing 45-day submission and export limits for license applications submitted after publication of the final rule, but before it is actually in effect, will be detrimental to a smooth transition period for either government or industry upon the culmination of the most significant export control reforms in decades. The contrast between this approach and the proposed two-year transition period for licenses in effect at the time of final rule publication is significant.

Similarly, the proposed policy -- beginning with a USML Category's final rule publication date, to Return Without Action ("RWA") any ITAR agreement or agreement amendment that includes "600 series" items and to terminate agreements that include only transitioned items -- represents a complete absence of a transition period for the implementation of these control list reforms. That is, the proposed rule requires applicants to be aware of items transitioning from the USML to the "600 series" the day after the publication of the respective USML Category's final rule. The impact to U.S. export/import activity would be wide-ranging, immediate, and significantly disruptive. In addition to its economic impact, the lack of an appropriate transition period to adapt to new jurisdiction and licensing rules, and to adapt internal corporate compliance processes, tools, and training, could potentially lead to many smaller U.S. suppliers being inadvertently out of compliance this new U.S. export control regime. This restrictive approach to new requests for export authorizations is in conflict with the Transition Rule's acceptance of two years of shared jurisdiction between DDTC and Bureau of Industry and Security (BIS) for "600 series" items for existing license approvals.

The following circumstances will further complicate a company's efforts to quickly comply with a USML Category's final reform rule:

- Applications do not always specifically enumerate all items for which authorization is sought. For example, applications often reference "kits", "assemblies", or "tools and equipment". The requirement to separate ITAR and "600 series" items within such kits or assemblies represents a new level of granularity, to which industry would need time to adapt. In today's environment, companies are allowed, for convenience, to include CCL items on export applications to DDTC that cannot be easily separated from ITAR-controlled items contained in specific "kits" or "lots" of spare parts. These can regularly include EAR99 items for which no license is required. This practice is simpler for exporters, less confusing and time-consuming for Customs officials reviewing shipments and does not change the proper jurisdiction of the items.
- Applications may include items from different USML Categories, and final rules may not be in effect for all USML Categories listed in a request for export authorization.
- In order to avoid unnecessary commercial disruption, the proposed rule's requirement to terminate licenses and agreements that are fully comprised of "600 series" items would need to allow sufficient time for a company to obtain BIS authorizations for these items prior to terminating its ITAR authorizations and allow continued shipment under existing, approved ITAR licenses until the BIS authorizations are in place, in order to reduce program delays.

### **Recommendations**

In recognition of the breadth and complexity of U.S. export control reform, we recommend the following revisions to this proposed rule:



- A six-month period between USML Category publication dates and effective dates. This would provide both government and industry with an additional period of time to prepare for final rule implementation. DDTC would continue to accept applications for “600 series” items during this period.
- A comprehensive transition period of two years for each USML Category, beginning with the effective date of that USML Category’s final rule. During this two-year period, DDTC and BIS would both be allowed to accept applications and approve licenses for “600 series” items. DDTC authorizations for “600 series” items would expire two years after the effective date of the respective Category’s final rule.

While not germane to this proposed rule, it is widely recognized that a crucial aspect of the success of this two-year transition period will be the ability of the Automated Export System (AES) to accept both ITAR and EAR nomenclatures and authorizations when using the system to record shipments of “600 series” items.

Boeing recognizes that DDTC, and its fellow agencies, BIS and the Defense Technology Security Administration, have invested considerable time and effort in developing a balanced, efficient, and sustainable export control reform program. We highly commend you for these efforts. We share this desire, and it is in this spirit that we provide the recommendations described herein. Again, we thank you for the opportunity to provide these comments.

Please do not hesitate to contact me if you have any questions or need additional information. I can be reached at 703-465-3463 or via e-mail at [kent.d.bossart@boeing.com](mailto:kent.d.bossart@boeing.com).

Sincerely,

A handwritten signature in black ink that reads "Kent D. Bossart".

Kent D. Bossart  
Senior Manager, Global Trade Controls



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

August 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 Export Control Reform Transition Plan - 77 FR 37346, Public Notice 7927**

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 an 8,000+ 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.

Overall, we are extremely pleased with the proposed plan to transition items from the US Munitions List to the Commerce Control List. For the most part the proposed plan is clear and fairly well thought. Although the transition itself will be a significant effort, the plan does not appear to create insurmountable challenges or impose undue burden on industry. We do have two concerns regarding implementation date and existing commodity jurisdiction determinations that we believe should be addressed in the final version of the transition plan.

**Existing Commodity Jurisdiction Determinations:** The section regarding Commodity Jurisdiction Determinations addresses existing USML determinations for items that would no longer be enumerated or otherwise specified in the revised USML. The section does not however address items that have been previously determined to not be subject to the jurisdiction of the ITAR. A goal of the export control reform effort was to clearly identify military critical items that should be controlled as such, and to move everything else to the CCL. Almost all of the proposed positive lists published to date have contained at least one entry whereby articles currently enumerated on the CCL and articles with CJ determinations of EAR export jurisdiction would suddenly be unnecessarily captured by the USML. Examples include, certain components and parts for jet engines in USML Category XIX, protective goggles in Category X, video games in Category IX, and any developmental item under a Department of Defense contract as stated in several proposed USML categories. We strongly urge the department to revise the language of

this proposed transition plan to include provisions whereby an item previously determined through the CJ process to not be subject to the jurisdiction of the ITAR remains controlling.

**Entry Into Force:** We strongly urge the Department to ensure the effective date for a final version of this rule is at least 120 days from its publication. There will be a significant level of effort required to prepare for implementation of this rule, including product jurisdiction and classification review and training. Most other actions associated with implementation should be able to be accomplished during the proposed 2-year transition period.

As we stated earlier, with the above exceptions we are very pleased with the proposed transition plan. It is clear and well thought out. We realize the transition itself will be a significant effort for both industry and the government. We urge the Department to consider our above comments in crafting the final transition plan, as they will enhance the effectiveness while reducing confusion and undue burden for everyone involved.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Heather C. Sears". The signature is fluid and cursive, with a long horizontal stroke at the end.

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

United Technologies Corporation  
1101 Pennsylvania Avenue, NW  
10th Floor  
Washington, DC 20004  
(202) 336-7400



August 6, 2012

U.S. Department of State  
Bureau of Political-Military Affairs  
Department of Defense Trade Controls Policy  
2401 E Street , N.W.  
Washington, D.C.

ATTN: Ms. Candace Goforth  
Director, DTC Policy

SUBJECT: ECR Transition Guidance

Dear Ms. Goforth:

United Technologies Corporation ("UTC") is submitting the attached comments in response to the State Department's ECR Transition Plan published in the June 21, 2012 Federal Register.

We appreciate the opportunity to provide these comments. Please feel free to contact me if you have any questions about these comments.

Sincerely,

A handwritten signature in black ink that reads "Jim Lemon". The signature is fluid and cursive, with a long horizontal stroke at the end.

Jim Lemon  
202-336-7462

Attachment: UTC comments on June 21, 2012 proposed State Department ECR Transition Plan

## **United Technologies Corporation (“UTC”) Combined Comments and Recommendations on June 21, 2012 Department of State Proposed ECR Transition Plan and Department of Commerce Proposed Rule on Export Control Reform and License Exceptions (i.e., “transition rules”)**

Industry recognizes that the goals of Export Reform cannot be achieved without significant effort on the part of all parties. However, as described below, the effort is significant, and there are aspects of the proposed transition rules that will effectively shorten the transition period, resulting in an undue burden on exporters.

The Commerce Department’s proposed transition rule states that it should be read “in conjunction” with the State Department’s proposed transition rule. For the purpose of these comments, we are also reading those two rules in conjunction with each agency’s proposed Category VIII transition rules, because it is our understanding Category VIII will be one of the first categories to transition. As such, these comments are applicable to various provisions of both agencies’ proposed overall transition plans and proposed Category VIII transitions.

### **Comments Applicable to Both Transition Rules**

#### **Impact on internal control and compliance systems and procedures, jurisdictional and classification marking systems, and defense trade**

The Commerce Department’s proposed transition rule states that, “[i]n addition to protecting and enhancing U.S. national security, Export Control Reform is expected to generate significant long-term benefits for U.S. exporters in the form of more efficient and flexible export controls that are more tailored to the significance of the item.” However, a primary concern of industry is that the agencies’ draft plans, when taken together, will seriously degrade the real-time efficiencies and flexibilities that exporters must have in order to comply with export control laws and provide uninterrupted support to defense trade as they begin to adjust to the transition.

On November 7, 2011 State and Commerce proposed to transition most parts, components, accessories, and attachments “specially designed” for military aircraft, engines and related articles, and technology related to all of those items from Category VIII of the United States Munitions List (“USML”) to the Commerce Munitions List (“CML”). In its proposed rule, the State Department indicated that, based in part on responses to its December 2010 notices, the Administration had determined that fundamentally altering the structure of the USML “would significantly disrupt the export control compliance systems and procedures of exporters and reexporters.” As a result, in lieu of those fundamental changes, the November 7 Category VIII proposal and others like it were put forth in part to “minimiz[e] the impact on exporters’ internal control and jurisdictional and classification marking systems.”

However, because the Category VIII rules alone will affect the jurisdiction of millions of pieces of hardware and an even greater number of technical specifications and other data items related to those hardware items, the impact on exporters will unavoidably be enormous. Unfortunately, State's proposed transition plan will greatly increase that impact and could significantly disrupt the export control compliance systems and procedures of exporters and reexporters.

At a minimum, exporters must perform the following tasks to ensure compliance with the transition rules:

1. assess the proper jurisdiction of all USML products and technologies pursuant to the transition rule;
2. identify known transitioning items;
3. Identify previously rendered commodity jurisdiction (CJ) determinations for transitioning items that are now invalid in accordance with the transition plan.
4. identify items for which jurisdiction is uncertain.
5. obtain CJ's for items with uncertain jurisdiction
6. determine the classification of all transitioning items on the Commerce Control List;
7. obtain CCATS determinations from Commerce for items with uncertain classifications
8. reclassify all transitioned items in internal databases;
9. maintain records reflecting all assessments of the proper regulatory jurisdiction and classification over their items.
10. examine all ITAR licenses/agreements/retransfer authorizations to determine which ones include transitioning items or technologies.
11. determine Commerce Department license requirements for transitioning items;
12. obtain any necessary Commerce Department licenses
13. train employees on their new obligations under the EAR
14. educate foreign parties on their new obligations under the EAR
15. make changes to internal compliance programs necessitated by the USML to CCL transition.
16. terminate or remove all CML items from existing ITAR licenses and begin exporting under EAR licenses/authorizations.

One of UTC's four aerospace units estimates that 80,000 parts and components will move from the USML to the CML and require new ECCN classifications. Another 10,000 parts and components are expected to remain on the USML, but will need to be reclassified into new USML categories. It estimates that at least 150 USML licenses/agreements will be impacted by these changes, and that 45 core customers will be impacted.

Another UTC aerospace unit estimates it will need to assess the jurisdiction of 75,000 hardware items and approximately 900,000 related data items. It estimates 400,000 of those items will ultimately transition to the CML, but that as many as 3000 may have uncertain jurisdiction. The unit has just over 300 active USML agreements/licenses, and estimates that 270 of those approvals contain items that will transition to the CML. It

estimates its 60 full time export managers and business area export representatives (“BAERs) and its 800 part time BAERs could spend up to 350,000 hours on transition-related work over the next two years.

Both of these business units also expect a significant increase in the number of CJs and CCATS they submit to the regulatory agencies as a result of the transitions.

Under the proposed plans, after a final rule is published, exporters must begin the huge job of internally identifying CML items, and seeking CJs and CCATS when doubt exists. But as explained below, State's implementation plan would also require exporters to immediately begin focusing on whether, with each CML determination they make, they will be able to continue to export *any* items (i.e., USML or CML) under any State Department licenses, agreements or other authorizations that may include those CML items.

After publication of a final rule, and certainly for the Category VIII rules, State’s proposed plan will unnecessarily create a rapidly growing “licensing emergency” with each internal CML classification and could disrupt the licensing of USML items for military programs through the plan’s abbreviated validity periods for existing USML authorizations, and its proposed RWAs of all new license requests, amendments, extensions, etc. that may contain any newly identified CML items. Efficiency and flexibility would therefore erode with each internal CML classification as the validity of more and more licensed defense trade will be jeopardized. Thus, the stated goal of State’s phased implementation plan, "to mitigate the impact on U.S. license holders, while assuring that all defense trade that should be licensed remains so," cannot be met under the plan as drafted.

#### **Commodity Jurisdiction and Classification:**

The State (S) and Commerce (C) draft transition plans, and Commerce’s proposed Category VIII transition rules (C2) provide that:

1. (S) Exporters are encouraged to review each revised USML category along with its companion CCL category to determine whether their items have transitioned to the jurisdiction of the Department of Commerce.
2. (S) Licensees who are unable to ascertain the proper jurisdiction of their items may request a CJ determination from DDTC through the current, established procedure.
3. (S) Licensees who are certain their items have transitioned to the CCL are encouraged to review the appropriate Export Control Classification Number (ECCN) to determine the classification of their item.

4. **(S)** Licensees who are unsure of the proper ECCN designation may request a Commodity Classification Automated Tracking System (CCATS) determination from the Department of Commerce through the current, established procedure
5. **(C)** The Administration recognizes that some items that would fall within the scope of the proposed new ECCNs will have been subject to commodity jurisdiction (CJ) determinations issued by the United States Department of State. The State Department will have either determined that the item was subject to the jurisdiction of the ITAR or that it was not.
6. **(S)** Previously rendered commodity jurisdiction (CJ) determinations for items deemed to be USML, but that are subsequently transitioning to the CCL pursuant to a published final rule, will no longer be valid after the transition date.
7. **(C2)** Items the State Department determined to be not subject to the ITAR and that are now not described on the CCL would be subject to the AT-only controls of the “.y99” paragraph of the applicable ECCN if they would otherwise be within the scope of the ECCN. Thus, for example, ECCN 9A610.x would control any part, component, accessory, or attachment not specifically identified in the USML or elsewhere in the ECCN if it was “specially designed” for a military aircraft.
8. **(C2)** If a particular part, component, accessory, or attachment was, as defined, “specially designed” for a military aircraft and was at the time of a CJ determination not identified on the CCL, it would be controlled under 9A610.y.99.
9. **(C2)** If it was identified or, as a matter of law or the result of a subsequent commodity classification (“CCATS”) determination by Commerce, controlled by another legacy ECCN, such as 9A991.d, 7A994, or 9A003, that ECCN would continue to apply to the item.
10. **(C2)** If, however, the State Department had made a CJ determination that a particular item was subject to the jurisdiction of ITAR but that item is not described on the final, implemented version of a revised USML category, a new CJ determination would not be required unless there was doubt about the application of the new USML category to the item.
11. **(C2)** Thus, unless there were doubts about the jurisdictional status of a particular item, exporters and reexporters would be entitled to rely on the revised USML categories when making jurisdictional determinations, notwithstanding past CJ determinations that, under the previous version of the USML, the item was ITAR controlled.
12. **(C2)** Finally, if the State Department had made a CJ determination that a particular item was subject to the jurisdiction of the ITAR and that item remains

in the revised USML, the item would remain subject to the jurisdiction of the ITAR.

13. (S) Consistent with the recordkeeping requirements of the ITAR and the EAR, licensees and foreign persons subject to licenses must maintain records reflecting their assessments of the proper regulatory jurisdiction over their items.

Clearly, the guidance above shows that simply determining the correct jurisdiction and classification of transitioning items can be a formidable task, especially in large companies where transitioning parts and their related specification sheets and other data items can easily number in the hundreds of thousands, as in the case of UTC's aerospace units. For example, for those commodities that will transition to the CML, UTC will also need to review all associated technical data (drawings, specifications, blueprints, manufacturing data, inspection processes, repair instructions, etc.). It is not unusual for a commodity to have up to twenty associated technical documents.

For the reasons provided below, while this extensive jurisdiction and classification work is underway, existing defense trade authorizations should not be jeopardized with unrealistic transition deadlines.

#### **Licensing and Exporting of Transitioning Items After Final Rule Publication:**

Commerce's transition rule provides that holders of State licenses for items that transition to Commerce jurisdiction who wish to begin using BIS authorizations may do so as early as the effective date of the rule by returning their DDTC licenses and complying with the EAR. That option will undoubtedly be used by many exporters for products that can be quickly reclassified and transitioned to Commerce control.

The Commerce rule also states that Commerce anticipates that State "will set forth approximately a two-year period during which, under certain circumstances, holders of DDTC authorizations that include items transitioning to the EAR may continue to use those authorizations." Unfortunately, State's transition rule contains provisions that would severely restrict the ability of exporters to either continue the uninterrupted use those authorizations -- even for non-transitioning items -- or obtain any new authorizations for potential transitioning items, even while those companies are heavily involved in the commodity jurisdiction determination and classification process described above.

State's proposed transition rule provides that, should a license or agreement contain an item or items moving from the USML to the CML, then the term of that license or agreement will automatically be limited to two years and cannot be renewed or amended until the transitioning items have been removed. Essentially, the inclusion of a transitioning item 'triggers' a status change to a license or agreement in terms of expiration date or 'amend-ability.' Therefore, all licenses and agreements must be reviewed to determine if they contain any of these 'trigger' items, as the term of the license may be less than what is indicated on the face of the license. Furthermore, this

review may need to be repeated with the publication of additional applicable USML categories.

The ITAR and EAR categories will be completely new and will require careful analysis, as 'items' that transition includes both commodities and technical data. Exporters will want to be certain that items are eligible to move from the USML to the CML, and that also may require requesting commodity jurisdictions (CJ) when doubt exists. As there will be no experience with the new regulations, out of an abundance of caution it is likely that the volume of CJs will increase. In the case of complex systems such as aircraft or aircraft engines, a license or agreement to support such systems typically covers literally thousands of parts<sup>1</sup>, many of which may move to the CML, and as importantly, many will remain on the USML. Therefore, these reviews will take a significant amount of time.

Whereas an expiration date can be planned, amendments are not always so accommodating. As an example, there may be an urgent business need to add a party, and the amendment will be delayed due to the need to review all the items covered by the license/agreement and also the possibility of needing to apply for a Commerce license.

Additionally, it is common that a transitioning item be called out on multiple agreements. As an example, transitioning parts in support of F100 Fleet Management Programs for our foreign partners may appear on two dozen different agreements. The first agreement to expire would then trigger the need to re-baseline all the other agreements, possibly well before the two year limit. In the case where there are thousands of parts to review, the effect is to render the two-year term moot. Also, the shortened term or 'amendability' of a license or agreement may be triggered by just a single item transitioning from the USML to the CML

A State Department license has always been deemed by industry to be a type of "safe harbor" to license -- or perhaps "over-license" -- CCL items for which jurisdiction was not "certain," or which were parts and components of a larger sale of USML defense articles and related USML parts and components.

The proposed transition plans, as they related to Category VIII items, are heavily reliant on exporters' ability to internally determine the correct jurisdiction, classification and licensing requirements for virtually all of their parts and components and related technical data that are used on military aircraft or engines. As such, exporters will not be "certain" of jurisdiction and classification and licensing requirements over many transitioning items until they have either completed the commodity jurisdiction and classification process required by the rules (as itemized above), or obtain a CJ and/or CCATS. In addition, jurisdiction mistakes will likely be commonplace with respect to internal reclassifications and for some time identical items will undoubtedly be exported alternatively as USML and CCL items by different exporters/reexporters.

Furthermore, as stated in the Commerce's draft transition plan, a major reason for the proposed transitions is avoidance of the situation where "[t]he least significant part or

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<sup>1</sup> It is not unreasonable for a gas turbine engine to have on the order of 8,000 different part numbers.

component is generally controlled [under the ITAR] the same way as the most significant part or component and the end item itself.” Thus, U.S. National Security would clearly not be threatened by the export of a CML item on a USML license.

### Recommendations

We offer the following suggestions that would still result in plan implementation, while allowing industry to plan the workload, instead of having to react to it:

1. Given the facts above and the magnitude of the proposed Category VIII transition alone, we recommend the transition plans of both agencies be revised to make clear that the identification of a transitioned item as a USML item on an export or temporary import control document, or the export or retransfer of such an item under a State Department license or other authorization will not be deemed to be a “Violation” of either the ITAR or the EAR.
2. We recommend modifying the transition rules such that industry has four years to transition CML exports from ITAR licenses to Commerce licenses/authorizations independent of required amendments or expiration dates of existing or new State Department authorizations that may include CML items. Effectively, State Department licenses and agreements containing transitioning items could be obtained, amended and renewed under the ITAR during the four year transition term. This would eliminate the need to immediately re-baseline twenty-three agreements because the twenty-fourth agreement with a common CML item expires shortly after the rule takes effect, or one of the licenses requires a minor amendment. Companies will need to review every agreement they have (which may easily be in the hundreds), some with several thousand items. In addition to the Jurisdiction and Classification effort, there will be a considerable increase in the number of licenses to be written, as in many cases, an ITAR agreement won’t be eliminated, but simply supplemented by a new Commerce license. Given the load on licensing organizations, we recommend that State Department licenses and other approvals continue to be issued, amended and valid for transitioning items until for at least four years after the rule is published in order to mitigate the rapid onset of work.
3. To address the situation where a large military sale includes a relatively small number of CML or CCL items, or when a new license or agreement would otherwise required in order to accommodate a small number of associated CML or CCL items, consider the creation of an optional ‘de minimis’ threshold that would permit State to authorize such CML and CCL exports under a State Department license..

### Specific Comments on the Commerce 6/21/2012 Rule

### **Previous License Approval for STA Recipients**

This provision requires clarification. The intent of the rule is to ensure the purchaser, intermediate consignee, ultimate consignee, or end-user ('foreign recipient') has undergone some level of USG screening. However, the U.S. entity planning on using the STA will only be aware of its own authorizations, which is much more limiting than the intent of general screening. To provide the broadest possible use of the exception that still meets the intent, BIS and DDTC could provide a public database of 'foreign recipients' that have been screened. Also, there is no time limit specified, implying that any authorization, no matter how long ago issued, would be sufficient. Lastly, if the 'foreign recipient' has undergone a change of ownership, organization, or name, there will be a need for guidelines for the user of the STA to determine if STA can still be used.

### **Congressional Notification**

We do not support the Commerce Department's plan to impose congressional notification requirements on CML items. Removal of less sensitive items such as parts and components from the lengthy congressional notification process was deemed to be an important benefit of the export reform effort.



**Bob Schuettler**  
Director, Corporate Export Licensing

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06 August 2012  
Ms. Candace M. J. Goforth  
Director, Office of Defense Trade Controls Policy  
U.S. Department of State  
PM/DDTC, SA-1, 12<sup>th</sup> Floor  
2401 E St, NW  
Washington, DC 20037

Subject: **DOS-2012-0020, Export Control Reform Transition Plan**

Dear Ms. Goforth:

Alliant Techsystems Inc. (ATK) appreciates the opportunity to comment on the subject proposed policy statement to provide insight and guidance on the transition of USML controlled items to the CCL and the corresponding disposition of licenses for transitioned items. ATK provides the following comments for areas of further refinement based on our review of the proposed policy statement.

- **Implementation Period**  
Given the efforts necessary for implementation, ATK requests the Directorate allow at least 180 days from the date of publication of each category until the effective date of the transition.
- **License Applications Received Within 45 Days Of Final Rule Publication**  
If such applications contain items transitioning to the CCL, the license validity period will be 45 days from final rule publication. ATK requests such applications be given the same treatment as other licenses. Namely, licenses will remain valid until: returned by the license holder, a license amendment is required, or for a period of two years from the effective date, whichever occurs first.
- **Agreements And Amendments Received After Final Rule Is Published But Before Effective**  
Any agreement or amendment received after the final rule is published that includes items transitioning to the CCL will be Returned Without Action. ATK requests such applications be reviewed and if approved, the agreement or amendment will have the same validity period as other agreements. Namely, agreements and amendments will remain valid until: expired, returned by the agreement holder, an amendment is required, or for a period of two years from the effective date, whichever occurs first.
- **Agreements Where All Items Are Transitioning To The CCL**  
Although the items may have transitioned to the CCL, the services provided by the agreement holder may still constitute a defense service based on the current definition of defense service (Section 120.9). As such, an agreement would still be required for the continued provision of services. Therefore, agreement holders should not be forced to terminate the agreement simply because the items have moved to the CCL.

- **Possible Violations Involving Transitioned Items**

Persons are “strongly encouraged to consult with DDTC or BIS as appropriate” when a possible violation is identified. ATK requests clarification and examples of situations where a person should contact the DDTC versus the BIS, if a possible violation is identified involving transitioned items.

- **Recordkeeping**

Recordkeeping was not addressed in the transition plan. What are the recordkeeping requirements for authorizations and associated records containing items that transitioned to the CCL? Must the records be maintained, as long as the activity / program continues under the EAR, or can the DDTC required records be destroyed after five years?

Since all the USML Categories have yet to be published in draft form, it is difficult to fully assess the impact of the transition rule on ATK’s defense articles. Regardless, ATK again thanks the Directorate for the opportunity to comment on the proposed policy statement and applauds the Directorate’s continued efforts on Export Control Reform.

Sincerely,

A handwritten signature in blue ink, appearing to read "Robert Schuettler".

Robert Schuettler  
Director, Corporate Export Licensing  
Alliant Techsystems Inc.



**Rolls-Royce North America Holdings Inc.**  
*Rolls-Royce Corporation at Indianapolis*  
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August 6, 2012

Director Candice M. J. Goforth  
Office of Defense Trade Controls Policy  
Department of State  
12<sup>th</sup> Floor, SA-1  
2401 E. Street NW  
Washington DC 20037

Submittal via Regulations.gov Portal

**Reference:** DOS-2012-0020 [Public Notice 7927]  
Proposed policy statement

**Subject:** Proposed policy statement regarding the Export Control Reform  
Transition Plan

Dear Ms. Goforth,

Rolls-Royce North America Holdings Inc. (Rolls-Royce) is pleased to respond to the June 21, 2012 Federal Register Notice requesting comments on the proposed policy statement for the Export Control Reform Transition Plan. Rolls-Royce commends the Administration's efforts on export control reform and agrees with the overall proposed structure for a smooth and seamless transition. However, Rolls-Royce believes that additional clarification is required to ensure these concepts are practical once proposed control list reforms are finalized.

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

**Congressional Notification Requirements:**

Rolls-Royce does not support the proposed Congressional Notification requirement for USML items approved for transfer to the "600 series." As a threshold matter, the Export Administration Act (EAA), as currently authorized by the International Emergency Economic Powers Act (IEEPA), does not specifically authorize the Congressional Notification requirements, as proposed.

That stated, we acknowledge the discretion of the U.S. Government to craft regulatory language to implement such a requirement in the interests of national security, should it choose to do so. Given the fact that the Administration's review and proposed transfer of certain items from the

USML to the CCL, with the concurrence of Congress under the AECA's 38(f) provision, is predicated on the premise that these items are not of critical importance to U.S. national security, we strongly urge removing the proposed Congressional notification requirement.

From a practical standpoint, duplicate notifications will result in significant transaction delay and cost to both industry and government, without increasing transparency regarding defense trade for Congressional stakeholders.

Rationale:

A single contract could include the sale of one or more complete items, as well as additional items for shipping, storage, testing, or other purposes. In such situations, the relevant ITAR application will normally require Congressional Notification, due to the high dollar value of the contract. Companion EAR license applications for parts and components would be related to the same contract. Therefore, EAR applications could inadvertently be subject to identical Congressional Notification requirements. This double-notification requirement would be an unnecessary regulatory burden for both government and industry.

We ask that both the Departments of State and Commerce reconsider the Congressional Notification language in the BIS proposed rule and that the provision be amended so as to base the notification requirement on the dollar threshold of the license application, rather than the contract value. In this manner, parts and components subject to the EAR would not be inadvertently captured. The Departments should also specifically indicate that there is no expectation for EAR applications to be subject to notification requirements in the circumstances in which the same platform has been notified pursuant to an ITAR application (or is being notified concurrently).

**Dual Licensing/Compliance Requirements for Defense Sales:**

Rolls-Royce has significant concerns about the new procedures, as proposed in this rule and the separate proposed rule establishing a jurisdictional methodology based on a concept of "Specially Designed", which will create dual-licensing and compliance requirements for a single defense sale. While the proposed rule seeks to ensure that existing ITAR license exemptions are not eliminated when moving an item to the CML, it does not address the fundamental problem with requiring multiple licenses and item jurisdiction determinations for a single defense transaction.

The proposed State and Commerce rules should authorize the use of comprehensive ITAR licenses (e.g., DSP-5, DSP-73, etc.) for the exports of CML or CCL items that are parts and components of ITAR defense articles (i.e., end-items and systems), in lieu of obtaining additional authorization(s) from the Department of Commerce, if these parts and components are included as part of a sale of a USML-controlled defense article. This would be in keeping with current industry export licensing practice and would eliminate the burden on the USG and industry associated with redundant licensing and compliance requirements - without adversely affecting national security interests. This approach would also be in keeping with the original intent of Export Control Reform - to create one list, licensed by one agency. Where it is possible, the U.S. Government should seek to implement that objective, not create multiple new

license requirements and compliance burdens for U.S. defense trade with our allies and partners abroad.

Rationale:

If implemented in its current form, a U.S. company that is seeking to sell USML Category VIII military aircraft to a foreign government, including some assembly abroad, would need authorization from the Department of State. That sale and assembly, however, could include thousands of parts and components that would be controlled separately under the CML. Although control on the CML might expedite future sales of parts and components to this approved program, the initial transaction that currently requires only a single authorization from the Department of State would now require multiple licenses from two agencies. This will not make U.S. defense licensing more efficient.

Moreover, this dual licensing framework would require a company to parse out potentially thousands of small parts and components for individual listing on a Commerce license. Each one of these items would need to be individually evaluated to determine whether it is a CCL, CML or USML item, increasing the complexity of the existing licensing requirements. Under current USML processes, these parts and components are authorized for export as general categories of items (e.g., “Category VIII(h) parts and components of the hydraulic/mechanical/electrical system.”).

A new dual-licensing regime would impose very significant additional compliance burdens and costs on international defense and aerospace trade under both the Foreign Military Sales (FMS) and direct commercial sales (DCS). As such, this change would be difficult to characterize as “reform.” The proposed Department of Commerce rule accompanying FRN RIN 06494-AF65 “Transition Rule” does provide a note that states: “The export of items subject to the EAR that are sold, leased, or loaned by the Department of Defense to a foreign country or international organization must be made in accordance with the FMS Program carried out under the Arms Export Control Act.” (See p. 37538 Note to (b)(2).) If the intent of this note is to declare that the authorization for FMS cases under 22 CFR 126.6(c) will apply to both USML and CML items, then that should be articulated clearly and explicitly in both the Department of Commerce and Department of State proposed rules. However, even if that is the intent, this exception would not apply to, or lessen the compliance burdens and costs associated with, Department of State authorizations for DCS.

During the list review process, the Departments of Commerce and State considered the creation of a license exception that would authorize CML items accompanying an ITAR-licensed export. AIA would also support this approach as a solution, if it was effectively crafted to address the duplicate license requirements and additional compliance burdens discussed above.

**Temporary Exports/Imports**

Rolls-Royce recommends the following language be added to the proposed rule:

*“Licenses issued by the Department of State prior to the effective date of the final rule for each revised USML category for the temporary export or import of items transitioning to the CML or*

*CCL will remain valid until expired or returned by the license holder, whichever occurs first. Any limitation, proviso or other requirement of the license will remain in effect.*

*Following the effective date of the expiration or conclusion of the ITAR license, any items that were exported under the ITAR, but subsequently transitioned to the EAR, should be treated as such and any requests for post-transition reexports or retransfers should be submitted to the Department of Commerce, as required by the EAR.”*

**Rationale:**

The expiration of ITAR temporary licenses, based on the need for an amendment or within a two year period, would cause a substantial additional burden on defense programs for sustainment (e.g., temporary transfer of items requiring repairs) and production (e.g., transfer of temporary test and/or production tooling). This would necessitate industry assessing thousands of active temporary licenses to determine jurisdictional status of individual items. Conducting these assessments as licenses expire (e.g., four years) or as they are returned by the license holder would be a more manageable process, and accomplishing the same objective. There is no risk to national security with this proposal, as temporary licenses require all hardware to be returned to its origin.

**Reexport/Retransfer:**

Reexport and retransfer of USML hardware is also a concern for our members. Licenses, agreements and other authorizations issued by the Department of State prior to the effective date of the transition regulation that authorize the reexport or retransfer of items (and related technical data) transitioning to the CML should be “grandfathered” without expiration.

**Rationale:** Foreign recipients of US origin hardware may not be in a position to correctly classify post-transition reexports or retransfers of hardware and technical data originally received as USML-controlled. For example, a foreign party that purchases a defense article, authorized for export under a DSP-5 license “in furtherance of” an agreement, which permitted reexport authority to a third party, may not understand that the retransfer authorization is no longer valid, if the hardware moves to the CML. Under Technical Assistance and Manufacturing License Agreements, the Department of State has authorized the sublicensing and reexport/retransfer of literally millions of items and related technical data to many thousands of foreign persons. Accordingly, the retransfer after the effective date of the items moving to the CML would potentially be a violation for which the original US exporter is accountable, in accordance with 127.1(c). Finally, if the USG has already conducted a comprehensive review and issued an authorization for such reexport or retransfer, it should not be required to repeat the process.

**Existing Authorizations**

Rolls-Royce recommends adding the following language:

*“Authorizations (DSP5, Part 124 Agreements) for items transitioning to the CML that are issued in the period prior to the date of final rule publication for each revised USML category will remain valid until expired, or returned by the license holder, whichever occurs first. Any limitation, proviso or other requirement imposed on the DDTC authorization will remain in effect. During the transition period, exporters may continue to identify the original USML*

*category delineated in the DDTC authorization on all required shipping documentation and AES filings.*

*Applications and amendment requests for items transitioning to the CML that are received by DDTC prior to final rule publication for each revised USML category will be adjudicated up until the effective date of the rule, unless the applicant requests that the application be Returned Without Action. New application requests for items moving to the CCL which are received after the effective date will be Returned Without Action with instructions to contact the Department of Commerce.”*

Rationale:

This approach will allow exporters to evaluate the impact of the USML to CML change and assess on a case-by-case basis whether to continue operating under valid authorizations or transition to the EAR. The new requirement to identify the jurisdiction for every item in an agreement would preclude amendment and the swift consideration of a new authorization, likely resulting in contractual issues, including potential work stoppage. This in turn would undermine the reliability of the United States to deliver defense platforms and systems to our allies and partners in a timely and efficient manner. Given the time and effort to secure the initial ITAR authorization, it may in fact be more efficient for the exporter to continue operating under the authorization rather than submit a duplicate request under the EAR.

In most cases, Rolls-Royce estimates that transitioning to the EAR will significantly streamline the export process, particularly when eligible for EAR license exceptions (e.g., STA, RPL, TMP, etc.). But in some cases (e.g. if ineligible for an EAR exception), US companies should be permitted to continue to export under existing DoS approvals throughout the life of the authorizations. This would provide a natural phasing in of the new system without costly and time-consuming base-lining/realignment efforts that will disrupt international trade and the defense supply chain.

If DDTC needs a firm date at which transition would be completed, we suggest four (4) years as the appropriate transition period, as this reflects the current standard authorization from the Department of State.

**Commodity Jurisdiction Sanctity Recommendation:**

Rolls-Royce recommends adding the following sentence to address validity of existing CJs:

*“Previously rendered CJ determinations for items deemed to be CCL, shall remain valid and their parts, components, accessories and attachments covered in the CJ determination shall remain subject to Commerce jurisdiction. Classifications of such items under the CCL shall also remain valid after the transition date.”*

Rationale:

The suggested addition will preserve the validity of previous CJ determinations. This is particularly important for situations where a precedent CJ included a CCL classification in addition to a jurisdiction assessment. Without this clarification, exporters may suddenly discover items previously assessed as “EAR99”, or other CCL entry, would transition to the CML with

corresponding increased levels of control. Further, this note will clarify that exporters do not need to start again with assessments of products that were subject to prior CJs and would eliminate the potential for parts and components of an end item that was previously determined to be Commerce pursuant to a CJ from potentially being subject to the ITAR.

**Entry Into Force:**

The effective date for a final version of this rule should be of at least 180 days from its publication.

**Rationale:**

The proposed rule would require companies to undergo multiple implementation changes (e.g., classification changes, marking requirements, tool updates, training, and licensing) that require time, thought and substantial resources. A delayed effective date for this rule is fully consistent with the approach that has been taken, for example, by the Bureau of the Census in rules that have a wide impact across the exporting community with the processing of hardware shipments through U.S. Government interfaces, such as AES. Without sufficient time to implement the complicated and resource-intensive requirements of the proposed rules, U.S. companies will be unable to comply and the chances for inadvertent compliance issues increases.

Rolls-Royce continues to support the Administration's efforts on export control reform, but have concerns about the proposed transition process as indicated above. Without modifications to the proposed Department of State and Department of Commerce transition rules, the overarching control list reform effort will not have the intended effect of making the U.S. export control system more efficient and effective and may, in fact, have adverse effects on U.S. defense and aerospace trade. Accordingly, we encourage the Departments of State and Commerce to consider these potential ramifications, and the recommended changes proposed in this letter, before publishing the export control reform transition plan in final form.

Rolls-Royce appreciates the opportunity to comment on this proposed rule. Feel free to contact me if you have any questions about these comments.

Sincerely,



William J. Merrell  
Vice President,  
Strategic Export Control – Americas  
Rolls-Royce North America Inc.