January 7, 2012

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

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

Subject: ITAR Amendments - Category XX RIN 1400-AD01
EAR Revisions - Submersible Vessels RIN 0694-AF39

General Comments:

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

"Military Use": Commendable progress has been made in substituting technical descriptions for "military use" and other similar words, such as "military applications", "military mission", or for "defense articles." Such expressions are inherently ambiguous, whether or not modified by "specially designed" or other non-technical terms, such as "specifically designed or modified" or "directly related." See below for specific recommendations to complete this process for Category XX and ECCNs 8x620.

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

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

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

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

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

> Technology “required” for the design of, the assembly of components into, and the operation, maintenance and repair of, complete production installations for items specified by the Munitions List or by 8A620, 8B620, or 8D620, even if the components of such production installations are not specified.

Parts: The July 2011 proposed definition of “specially designed” would exclude what ITAR 121.8(d) defines as a “part.” It is, therefore, recommended that all mention of parts in Category XX or ECCNs 8x620 be deleted.

“Accessories and Attachments”: The ITAR 121.8(c) definition of these words notes that they are “not necessary” for the operation of an end-item, component, or system. The examples given are separately controlled (riflescopes in I.f and special paints in XIII.g). Therefore, it is recommended that all mention of accessories, attachments, and associated equipment in Category XX and ECCNs 8x620 be deleted.

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

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

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

Specific Reommendations to Revise Proposed Category XX and ECCNs 8x620

Revise XX.a to read: Submersible and semi-submersible vessels, whether or not demilitarized or decommissioned, manned or unmanned, tethered or untethered, as follows:

Revise XX.a.1 to read armored submarines

Revise XX.a.4 to read armed or serve as a platform to deliver munitions or otherwise destroy or incapacitate targets by firing torpedoes, launching rockets, firing missiles, deploying mines, or deploying countermeasures;

In XX.a.5 delete specially designed

Revise XX.a.6 to read vessels equipped with mission systems to provide electronic warfare, target designation, surveillance, target detection, or sensor capabilities;

Add new XX.a.8 integrated with nuclear propulsion systems .

In XX.b delete special

In XX.c delete , parts, accessories, attachments, and associated equipment "specially designed"

In XX.c Note delete parts, and delete , accessories and attachments

Revise XX.d to read

> Software "required" for installation, operation, maintenance, repair, overhaul, or refurbishing of XX.a,b,c and software portion of .d; and
> Technology "required" for installation, operation, maintenance, repair, overhaul, or refurbishing of XIX.a,b,c and software portion of .d.

Delete 121.14

In 123.20(a) after Nuclear Regulatory Commission insert or the Department of Commerce (the Nuclear Non-Proleferation Act of 1978 requires Commerce control of items now on the CCL for NP reasons)

In 125.1(e) after Nuclear Regulatory Commission insert or the Department of Commerce (the Nuclear Non-Proleferation Act of 1978 requires Commerce control of software or technology items now on the CCL for NP reasons)

In 8A620 heading change "oceanographic and associated equipment" to "and related equipment"

In 8A620 Unit delete parts and delete accessories and attachments
Revise 8A620 Related Controls (1) to read Submersible vehicles and related articles, including

software and technology ”required” for installation, operation, maintenance, repair, overhaul, or refurbishing, described in 22 CFR part 121, Category XX are subject to the jurisdiction of the International Traffic in Arms Regulations (ITAR). Components for defense articles in USML Category XX are controlled under USML sub-category XX(c).

Revise 8A620 Related Controls (3) to read: For controls on submersible vehicles and related equipment not controlled by the USML see ECCNs 8A001, 8A002, and 8A992.

Revise 8A610.a to read: Deep Submergence Rescue Vehicles (DSRV) and Deep Submergence Vehicles (DSV)

Revise 8A610.b to read: Submersible and semi-submersible vessels for cargo transport.

In 8A620.d.1 and d.2 delete “specially designed”

In Note to 8A620.d after “Other propulsion systems” insert “not common to vessels on the EAR or” (for consistency with XX.c Note)

In 8A620.f delete “specially designed for military use and”; delete “specially designed”; and delete “to military use”

In 8A620.x, delete “Parts,”; delete “, accessories and attachments” and change “specially designed” to “required”

Delete 8A620.x Note 2

Delete 8A620.y, 8B620.y, 8D620.y,and 8E620.y and references elsewhere to these sub-items

In 8B620 heading change “specially designed” to “required”

In 8B620.a change “specially designed” to “required” (twice); delete “parts,”; delete “accessories and attachments”

In 8B620.b change “specially designed” to “required” (twice); delete “parts,”; delete “accessories and attachments”

Revise 8D620 heading to read: Software “required” for submersible vessels and related commodities and software, as follows (see List of Items controlled)

In 8D620 Related Controls (1) change “directly related to” to “required” for installation, operation, maintenance, repair, overhaul, or refurbishing of

In 8D620.a change “specially designed” to “required”; add installation, repair, overhaul, or refurbishing; in parenthetical except clause change or to and

In 8D620.b change “specially designed” to “required”; add installation, repair, overhaul, or refurbishing

Add new 8D620.c:
c. Software “required” for development or production of XX.a,b,c and software portion of d

Revise 8E620 heading to read: Technology “required” for submersible vessels and related commodities and software, as follows (see List of Items controlled)

In 8E620 Related Controls (1) change “directly related to” to “required” for installation, operation, maintenance, repair, overhaul, or refurbishing of

Add new 8E620.c and d:
c. Technology “required” for development or production of XX.a,b,c and software portion of d; and
d Technology “required” for the design of, the assembly of components into, and the operation, maintenance and repair of, complete production installations for XX.a,b,c and software portion of .d, even if the components of such production installations are not specified.

<u>Recommended Category XX portion of Wassenaar Proposal</u>

Revise underwater portions of WML 9 to correspond with proposed Category XX.a,b,c plus 8A620.a,c,d,e,f,x revised as recommended above (this assumes the improbability of multilateral agreement on 8A620,b)

Revise WML 16 to conform with Note 1 to 8A620.x
In WML 18.a change “specially designed or modified” to “required” and change “specially designed” to “required”
In WML 18.b change “specially designed” to “required” (twice)
In WML 21.a change “specially designed or modified” to “required”
Revise Wassenaar definition of “required” to include commodities and software as well as technology

Huntington Ingalls Industries

February 3, 2012

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

Subject: RIN 1400-AD01 - Category XX Rule Comments

Dear Mr. Shotwell:

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

HII appreciates the efforts of the Department of State in moving submarines to a new proposed Category XX. However, the proposed changes will not substantially alter the licensing activity of HII with the Department of State.

Changes to § 121.1 Category XX – Submersible Vessels and Related Articles

Paragraph XX(b)
HII suggests that both non-land and land prototypes should be controlled by this paragraph. Thus, we respectfully request the deletion of 'land' from the proposed language.

Paragraph XX(c)
HII believes that the proposed language in this paragraph is confusing and must be clarified for the final rule. The discussion in the Federal Register Notice published by the Department of Commerce (RIN 0694-AF42) suggests that the intent of this paragraph is to be all-inclusive of any parts, components, accessories, attachments, and associated equipment that relate to paragraphs XX(a) and (b); to do so, however, would be counter to the Export Reform Initiative of providing a positive listing of defense articles subject to the USML. Despite having questions as to why this is the only category subject to deviation, HII recommends that the proposed language clarify this exception to the Export Reform Initiative and why the absence of a positive listing of parts, components, accessories, attachments, and associated equipment is appropriate.

Paragraph XX(d)

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

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

Sincerely,

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

Association Connecting Electronics Industries

IPC®

Government Relations
1901 N. Moore Street, Suite 600
Arlington, VA 22209

703-522-0225 tel
703-522-0548 fax
www.ipc.org

February 6, 2012

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

Re: Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Category XX (Federal Register Docket ID. 2011–32866, RIN 1400–AD01)

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

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

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

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

I. About IPC

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

II. National security importance of printed circuit boards and designs

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

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

- **Ballistic Missile Submarines (Ohio Class SSBN) and Trident D5 Missile Electronic Systems -** Fire control (on the platform) and missile electronics (navigation, guidance, and flight control - on the missile) reflect high reliability and performance electronic systems. Laminate systems, construction stack-ups, and conductor geometries called out in printed circuit layout design (Gerber files) and construction requirements can betray operating frequencies and frequency areas of sensitivity thereby allowing adversaries insights and avenues into defeating critical electronic functions.

- **Payload Applications (Electro-optics and Sensor Technology) for Autonomous or Unmanned Platforms -** For autonomous or unmanned platforms, object control is of paramount importance. Printed board design can expose mission functionality or capability of the system. With respect to printed circuit boards used in EO/IR sensor applications, examples include electronics that run advanced image processing algorithms such as automatic/aided target detection, recognition, tracking and imagery enhancement such as local contrast enhancement, facial analysis, etc.

- **Tomahawk Cruise Missiles and Guidance systems -** The Tomahawk® Land Attack Missile (TLAM) is an all-weather, long range, subsonic cruise missile used for land attack warfare, launched from U. S. Navy surface ships and U.S. Navy and Royal Navy

submarines. The Block III version incorporates engine improvements, an insensitive extended range warhead, time-of-arrival control and navigation capability using an improved Digital Scene Matching Area Correlator (DSMAC) and Global Positioning System (GPS) — which can significantly reduce mission-planning time and increase navigation and terminal accuracy. Tomahawk Block IV (TLAM-E) is the latest improvement to the Tomahawk missile family. Access to the printed board design and function provides information about the missiles and guidance systems can be countered or disrupted by external means.

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

III. Current Rule

Under the current ITAR, printed circuit boards designed for gas turbine engines covered by ITAR are generally within the scope of the USML's controls on "components" that are specifically designed or modified for defense articles. Their printed board designs are also controlled by Category XX(d) and/or Category XI (Military Electronics), because they reveal technical data regarding both the printed boards and the ultimate defense articles into which the printed boards are installed. IPC understands the treatment of printed boards under ITAR to be unequivocal, but the Association has longstanding concerns that current law is frequently misunderstood, leading to preventable ITAR violations. IPC maintains that greater clarity about the controls on printed boards is necessary to protect national security.

IV. Proposed Rule

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

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

V. Recommendation

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

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

IPC seeks similar clarification for printed boards in other USML categories, although IPC recognizes that there could be a number of additional ways to address this issue. DDTC may wish to amend the definition of "technical data" in 22 C.F.R. §120.10, to clarify this point. Another approach would be to address the issue clearly in Category XI (Military Electronics), to explicitly cover all printed board designs related to defense articles.

VI. Conclusion

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

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

Accordingly, IPC recommends that DDTC clarify the status of printed board designs in its final rule regarding Category XX and has suggested one approach in Section V. Further, IPC recommends that DDTC consider the issue of printed circuit board designs in the context of its ongoing revision of the USML, through steps such as (1) clarifying the scope of technical data in each USML Category, noting that printed board design coverage follows the coverage of the end item itself, (2) amending the definition of "technical data" in 22 C.F.R.

---

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

§120.10, to clarify this point across all categories, and (3) clarifying Category XI to refer expressly to printed board designs for defense articles.

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

Sincerely,

Anthony Hilvers
Vice President, Industry Programs

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

United Technologies

February 06, 2012

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

Attn: ITAR Amendments—Category XX, Submersible Vessels and Related Articles

Re: Amendment to the International Traffic in Arms Regulations: Revisions to the U.S. Munitions List Category XX (76 Fed. Reg. 80305, December 23, 2011)

Dear Mr. Rice:

United Technologies Corporation ("UTC")[1] appreciates the opportunity to submit these comments on the United States (U.S.) Department of State's proposed rule to amend the International Traffic in Arms Regulations ("ITAR") to revise the United States Munitions List (USML) Category XX – Submersible Vessels, Oceanographic and Associated Equipment. The proposed rule would revise Category XX to establish a clearer line between the USML and the Commerce Control List (CCL)[2] regarding controls over submersible vessels and related articles, and moving submarines and related parts, components, accessories, attachments and related equipment from Category VI to Category XX. More specifically, the proposed revision consolidates all submersible vessels and related articles controlled on the USML to a single Category and for only those that warrant control under the stringent requirements of the Arms Export Control Act and the ITAR.

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

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

As stated in our comments on other recent proposed rule changes, UTC strongly endorses the Administration's Export Control Reform Initiative, and its stated goal of strengthening national security and the competitiveness of key U.S. manufacturing and technology sectors by focusing on current threats and the changing technological landscape.

For UTC companies, a portion of defense trade licensing activity relates to defense articles and defense services falling under the present USML Category XX. UTC's marine products for submersible vessels includes power and management systems, atmosphere monitoring and management, gas generation and scrubbing, among others.

I. USML Category XX – Submersible Vessels and Related Articles

A. Submersible Vessels and Related Articles.

Despite the apparent intention to transfer certain submersible vessels and related articles to the CCL, Category XX would control submersible vessels equipped with any "mission systems" that are controlled on the USML. If interpreted broadly, he definition of "mission systems" in 121.14(a)(5) would effectively preclude the transfer of all or most submersible vessels that would otherwise be transferred to the Commerce Department's proposed ECCN 8A620.a on the CCL because such vessels are routinely equipped with USML-controlled communication and navigation equipment.

We suggest amending the definition of "mission systems" to achieve a more balanced result by revising the definition to exclude communication and navigation equipment for submersible vessels, as described below. This would be consistent with the apparent intent to transfer those types of submersible vessels to ECCN 8A620.a or 8A620.b.

1. USML Communication Equipment.

Military communication receivers/transmitters, which are needed for communication on military frequencies, appear to be captured by the definition of "mission systems". The installation of such equipment on a submersible vessel should not cause the vessel to be placed on the USML. Radios capable of transmitting on military frequencies are required not only for communication with land based stations, but also for communications with these and other vessels. Communication on military frequencies also may be required during humanitarian missions and for coordination between military and civilian authorities. "Military communication" is a basic function required for operations, and the presence of the military radio does not alter the mission or function of the submersible vessel. Reflecting the above rationale, we recommend the proposed definition of

"mission systems" be revised to specifically exclude "military VHF, UHF, AM, FM and HF, and combinations thereof, radios for submersible vessels."

2. USML Navigation Equipment.

As is the case with military communications equipment, military navigation equipment is likewise required for submersible vessels to perform their missions. Such equipment is necessary to use military navigation aids inside and outside the U.S. The installation of navigation equipment in a submersible vessel does not alter the mission of the vessel but rather permits the vessel to be used for its intended purpose. We recommend the proposed definition of "mission systems" be revised to exclude "military navigation equipment for submersible vessels."

B. The use of the term 'inventory submersible and semi-submersible vessels'.

The term 'inventory submersible and semi-submersible vessels' is used in 121.14(a). While this is assumed to mean submersible and semi-submersible vessels in service (as opposed to development or production), it is not clear what is meant by inventory, as it could mean, at a minimum, operational, reserve, or mothballed. It is also not clear if the inventory is that of the United States military, or other militaries.

C. Implementation.

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

1. Phase-in of changes.

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

2. 'Grandfathering'.

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

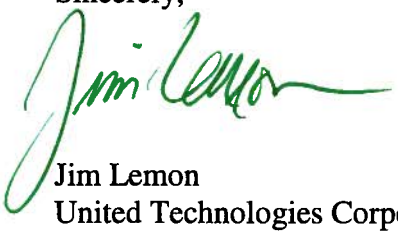
3. Existing and in-process licenses and agreements.

Permit 'grandfathering' of existing and in-process licenses and agreements. There may be cases where amending an existing Department of State authorization may be faster than applying for a new BIS license. In this case, the item(s) would necessarily retain the jurisdiction stated in the authorization. Continuing to license an item under the original jurisdiction should not preclude transitioning the Categories VI or XX items to the CCL or USML Category XX without agency agreement.

* * *

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

Sincerely,



Jim Lemon
United Technologies Corporation

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

February 6, 2012

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

Submittal via Regulations.gov Portal

Reference: RIN 1400-AD01 [Public Notice 7737]
Proposed Rule

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

Dear Mr. Shotwell,

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

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

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

Category XX (a)(6)
Delete in its entirety. The proposed language is too vague. A positive list will identify the proper controls. The proposed language leaves too much up for interpretation.

Category XX (a)(7)
Revise wording to positively capture the unique military vessels as follows:

(c) Developmental **military** submersible vessels. ~~developed under a contract with the U.S. Department of Defense.~~ **This includes vessels which are being developed**

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

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

(a) In Category XX, ``submersible vessels of war" ~~means developmental, demilitarized, decommissioned, production, or inventory~~, manned or unmanned, tethered or untethered, that:

(a)(5) Delete in its entirety. The broad terminology used seems to counter the goal of creating a more positive list. This is inconsistent with the intent for current ITAR platforms not specifically enumerated moving to the EAR "600" series. The majority of military vessels would contain at least one of the systems described.

Sincerely,

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

February 6, 2011

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

Re: RIN (1400–AD01)

To Whom It May Concern,

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

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

The Need for Reciprocal Licensing Exemptions/Exceptions

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

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

nationals of proscribed countries, and the institution informs the employees in writing of the obligation not to transfer the technical data to other foreign nationals. A similarly important ITAR exemption for academia is 22 CFR §125.4(b)7 which allows for technical data to be exported to the original source of import.

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

Consistent Applicability of Definition of "Mission Systems"

While paragraph §121.14(a)(5) defines the term "mission systems" for all of Category XX, there is a lack of consistency between the definitions of "mission systems" used in in this paragraph and that used in paragraphs §121.3(a)(6) (Category VIII) and §121.4(a)(3) (Category VII) that could create confusion. Specifically, "mission systems" as defined in paragraphs §121.3(a)(6) and §121.4(a)(3), specify that "mission systems "are defined as defense articles. AUECO suggests that paragraph §121.14(a)(5) should be amended to be consistent with the Category VII and VIII definitions of "mission systems" and proposes the following change:

> (5) incorporate any ''mission systems'' controlled under this subchapter. ''Mission systems'' are defined as ''systems'' (see § 121.8(g) of this subchapter) **that are defense articles** that perform specific military functions such as by providing military communication, electronic warfare, target designation, surveillance, target detection, or sensor capabilities.

Without this clarification, language such as that found in §121.14(a)(5) ("mission systems") will confuse exporters.

Consistent Applicability of Criteria Defining "Developmental" Defense Articles

"Developmental" items (e.g., vessels, aircraft) are dealt with in an inconsistent manner in the subject categories. In Categories VII and XX, "developmental" items are controlled as defense articles only when the developmental item has the characteristics specified in paragraphs §121.4 and §121.14, respectively. In Category XX, "developmental vessels" are further designated Significant Military Equipment when two criteria are met: (1) the "developmental vessel" meets the criteria of paragraph paragraphs §121.14, and (2) the "developmental vessel" is developed under a Department of Defense contract. On the other hand, as proposed in Categories VI and VIII, "developmental vessels" in and "developmental aircraft" are defined as defense articles without regard to the criteria specified in paragraphs §121.15 and §121.3 respectively. In these instances mere funding under a DoD contract appears to be the criteria that defines the developmental vessel or aircraft as a defense article. AUECO believes that Category VII and XX correctly restrict the definitions of developmental items to only those items with specific positive criteria in paragraphs §121.4 and §121.14, while the definitions of developmental vessels and aircraft in Categories VI and VIII, which do not have such restrictions, are overly broad.

Lack of Definition of "Military Payloads"

AUECO is concerned that paragraph §121.14(a)(2) includes in its definition of defense articles submersibles "specially designed" to be used as a platform to deploy "military payloads" a term which is not defined. Without precise definitions, even innocuous payloads carried by any experimental, research, or developmental vessels, such as the SeaPerch Remotely Operated Vehicles, might be considered to be carrying "military payloads". AUECO recommends that paragraph §121.14(a)(2) be revised to include additional qualifications or descriptive terms for "military payload", such that only payloads that are defense articles meeting specified criteria are controlled, or that the entry be removed, consistent with entries in Categories VI, VII, and VIII.

The Need for Harmonized Definitions

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

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

Closing

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

AUECO is concerned that without a lack of reciprocal licensing exemptions under the EAR, moving items and technologies from the USML to the CCL may create an increased licensing burden for universities. Additionally, as currently written, the proposed revisions to Category XX appear to create confusion and uncertainty as to the applicability of the term "mission system". Without consistent structure and language in each of the paragraphs under Category XX, exporters may be forced to treat items and technologies that do not appear to provide a critical, substantial or significant military advantage as being ITAR controlled. A lack of relevant definitions also makes the proposed revisions to Category XX concerning. For example, a lack of definition for the term "military payload" is problematic, as is the lack of harmonized definitions for key terms such as "development" and "fundamental research" that are absolutely necessary to analyzing the proposed rewrite. AUECO is also concerned about the applicability of Category XX §121.1(a)(7) to DoD fundamental research and educational outreach.

Sincerely,

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