August 3, 2012

Mr. Timothy Mooney
Regulatory Policy Division
Bureau of Industry and Security
U.S. Department of Commerce
14th Street and Pennsylvania Avenue, NW
Washington, DC 20230

VIA ELECTRONIC SUBMISSION ON WWW.REGULATIONS.GOV

RE: Specially Designed Definition – RIN 0694-AF66

Dear Mr. Mooney:

These comments are submitted on behalf of the Industrial Fasteners Institute (IFI) to both the Department of State and the Department of Commerce on the proposed definition of "specially designed" for use in the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR). IFI is the trade association representing 85 percent of the North American production capacity for mechanical fasteners. These nuts, bolts, screws, rivets and similar fastening devices and systems hold together everything we use in everyday life. They are prevalent in aircraft, vehicles, ships and numerous other items widely used in both military and civilian applications, and therefore, the application of export controls is of particular importance to fastener manufacturers. Most fastener manufacturers are small to medium-sized businesses, and the U.S. fastener industry employs approximately 42,000 workers.

On December 22, 2011, IFI provided comments to both the Departments of State and Commerce on the proposed changes to Category VIII regarding the control of aircraft and related items. In those comments, IFI applauded the Administration's overall efforts to amend the EAR in conjunction with amendments to the ITAR to describe more precisely which articles warrant continued control under ITAR and which are subject to the EAR.

In particular, IFI noted that, if our understanding of the proposed revisions was accurate, we would expect that upon finalization **ONLY** those fasteners "specially designed" for a specific list of U.S.-origin aircraft that have low observable features or characteristics would be subject to continued control under ITAR. Further, we stated our belief that all other fasteners "specially designed" for military aircraft would be subject to the jurisdiction of the EAR, as appropriate. Finally, depending on the final definition of "specially designed", we stated our opinion that most fasteners used in military aircraft would not qualify as "specially designed" and thus would not be subject to either ITAR or EAR controls.

Both the Department of State and the Department of Commerce have now proposed a final definition of "specially designed" (**Federal Register** / Vol. 77, No. 118 / Tuesday, June 19, 2012), and generally IFI believes that both proposed definitions would result in the same outcome as anticipated in our December 2011 comments, and would apply to fasteners contained in all categories of end items potentially subject to either ITAR or EAR. We believe this is the right approach, as it retains the ability to control fasteners that meet the definition of "specially designed" while creating a streamlined "decision tree" process for determining which fasteners no longer warrant controls under ITAR or EAR.

It is our understanding that if these definitions are adopted, the United States Munitions List (USML) will become a "positive list"—that is, any items to be controlled under ITAR will be specifically listed on the USML. All other items will be subject to EAR controls, but only if they meet the definition of "specially designed" including the exclusion paragraphs.

We further understand that Commerce is attempting to create a "yes/no" decision tree process for determining whether an item, part or component is "specially designed" by posing a series of questions, beginning with a general definition and proceeding, if necessary, through several specific exceptions or exclusions. Under the proposal, if the answer is "no" at any point in the questioning, the item is not "specially designed" and no further analysis would be required.

However, we believe additional clarity is necessary in several areas in order to insure that the final definitions accomplish that goal without inadvertently "controlling" parts or components that do not warrant control. Our remaining comments will address those areas.

One of the exclusions (Exclusion paragraph (b) (2)) specifically excludes "any single unassembled "part" that is of a type commonly used in multiple types of commodities not enumerated on the USML or the CCL". Examples of "parts" listed in this exclusion are threaded fasteners (screws, bolts, nuts, nut plates, studs, inserts), other fasteners (clips, rivets, pins), and basic hardware (washers, spacers, insulators, grommets, bushings, springs). We would make two points with regard to this exclusion:

1. While we understand that this list is not intended to be all-inclusive, we believe it should be made clear in the final definition that "fasteners" comprised of multiple sub-components are included. Parts such as nut plates, blind bolts, rivets, latches and panel fasteners may be comprised of numerous sub-components required to complete the final "fastener".

2. It is our understanding that Commerce intends to view "fasteners" broadly when determining whether they are "of a type commonly used in multiple types of commodities not enumerated on the USML or the CCL". Specifically, we understand that to mean that variations in such things as dimension, material, coatings or lubricants are not sufficient to cause a fastener to be "specially designed", unless one or more of those variations contribute to low observable features of an aircraft or some other unique characteristic of an end item warranting control. We suggest that be made clear in the final definition.

Another of the exclusions (Exclusion paragraph (b) (3)) would exclude a part, component, accessory or attachment that: "Has the same form, fit, and performance capabilities as a part, component, accessory, or attachment used in or with a commodity that: (i) Is or was in ''production'' (*i.e.,* not in ''development''); *and* (ii) Is either not enumerated on the CCL or USML, or is enumerated in an ECCN controlled only for Anti-Terrorism (AT) reasons." We believe further discussion and clarity is required regarding the terms "form" and "fit" as stated below:

1. As currently written, it appears that only identical parts used in both civilian and military applications would be considered within the definition, which does not adequately reflect the interchangeability of parts that perform the same function. For example, permanent lockbolts and permanent threaded bolts are two types of fasteners commonly called "pins". While they are intended to be interchangeable, have the same fit and performance characteristics, they have a different form because of different design principals.

2. Similarly, the task of holding a panel closed can be accomplished with either a latch or a panel fastener, and the decision to use one versus the other is essentially a matter of designer preference, not performance. Yet they do not have the same form or fit.

We also suggest that further clarification is necessary to adequately address fastener installation tools, which are often provided to the end user by the fastener manufacturer. IFI believes that such tools should not require control under either the ITAR or EAR, but it is not clear from the current draft how one would determine that using the "decision tree" process. For example:

1. A fastener installation tool would seem to be an “accessory”, because it is not installed on an end item, so it would not fall within exclusion paragraph (b) (2).

2. End users may request that the tool be modified by lengthening or shortening the handle. If that is done at the specific request of a supplier of a defense item, the tool would not fall within exclusion paragraph (b) (3), as it now has a different form.

3. Similarly, it is not clear that exclusion (b) (4) would exempt a modified tool as it would be difficult if not impossible to conclude there is a “reasonable expectation” of use on a civilian article.

With those caveats, IFI supports the overall Administration approach, which would retain ITAR control of critical fasteners that contribute to the properties of key U.S.-origin aircraft having low observable features or characteristics. All other fasteners would be subject to control under EAR, but only if they are “specially designed” for military end items.

IFI appreciates the opportunity to comment on this proposed definition. We would be happy to answer any questions regarding these comments or export controls and their effect on fastener manufacturers. Please contact our Washington Representatives: Laurin Baker at 202-393-8525 or Jennifer Baker Reid at 202-393-8524 if you have any questions.

Sincerely,

Robert J. Harris

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Managing Director

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