August 3, 2012

Timothy Mooney
Office of Exporter Services
Regulatory Policy Division
Bureau of Industry and Security
Department of Commerce
1401 Constitution Ave., NW
Room 2705
Washington, DC 20230

ATTN: Notice of Inquiry – RIN 0694-AF66

Dear Mr. Mooney:

Cummins Inc. ("Cummins") hereby submits our comments regarding a proposed rule the Bureau of Industry and Security ("BIS") issued for public comment on June 19, 2012, concerning a proposed new definition for "specially designed" ("Proposed Rule"). We appreciate the opportunity to provide comments on these important issues. Cummins is dedicated to supporting the efforts of the U.S. Government to protect its national security interests. A targeted and transparent export control regime can be an effective tool in protecting those national interests. We support President Obama's export control reform initiative to re-evaluate and modernize export control regulations.

Cummins Inc. is a global leader in the diesel power industry. The company operates four business segments: Engine, Power Generation, Components, and Distribution. We have complementary business units that design, manufacture, distribute and service engines and related technologies, including fuel systems, controls, air handling, filtration, emission solutions and electrical power generation systems. Headquartered in Columbus, Indiana, U.S.A., Cummins serves customers in approximately 190 countries and territories through a network of more than 600 company-owned and independent distributor locations and approximately 6,500 dealer locations. Cummins reported net income of $1.85 billion on sales of $18 billion in 2011.

I. Summary

Cummins makes a wide variety of diesel engines. Most of these engines are for commercial applications. But we have modified certain parts and components of some engine models for use in combat and non-combat military vehicles. Consequently, the "specially designed or modified" parts and components, software, and technology for non-combat military vehicles fall under ECCNs 9A018, 9D018, and 9E018 of the

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Commerce Control List ("CCL"), respectively, while the "specifically designed or modified" parts and components for combat military vehicles fall under Category VII(g) of the U.S. Munitions List ("USML"). If relevant proposed regulations for military vehicles were to take effect, Cummins believes all of these parts and components, if specially designed, would come under the proposed ECCN 0A606.x. The majority of the Cummins parts and components currently controlled as ECCN 9A018.b or under USML Category VII(g) are not specifically listed in proposed ECCN 0A606.y. Cummins does not make any engine consisting entirely of parts and components that are controlled under the CCL or USML. Rather, the engines we make for military trucks use commercial base engines that mostly consist of commercial parts and components, most of them classified as EAR99.

This letter will discuss the Cummins products that may be affected by the proposed specially designed definition and will use examples of parts currently controlled under USML Category VII (g) or ECCN 9A018 because they would be considered to be specially or specifically designed based on current regulations.[1] Cummins believes many of these parts should fall into one of the stated goals of the proposed "specially designed" definition - "Be capable of excluding from control simple or multi-use parts such as springs, bolts, and rivets, and other types of items the U.S. Government determines do not warrant significant export controls."[2] However, after taking some of the parts through the proposed "specially designed" definition it is unclear if they would remain controlled at a level far above parts that "do not warrant significant export controls."

We recommend that paragraph (b)(2) of the proposed "specially designed" definition be clarified to state whether an item must fit into one of the example categories currently listed in paragraph (b)(2) to be excluded by reason of paragraph (b)(2) from the definition of "specially designed," and if so, that more example categories be added to make it clear that items of the type described in Section II and footnote 1 below would be covered by (b)(2). In addition or in the alternative, we recommend that the items of the type described in Section II and footnote 1 below be specifically enumerated in the proposed ECCN 0A606.y to keep them at the appropriate level of control and meet one of the stated goals of reform.

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[1] Broad list of example parts currently controlled under ECCN 9A018.b or USML Category VII(g) because they were specially or specifically designed under current regulations: air tanks, brackets, brace supports, couplings, dampers, dipsticks, dipstick tubes, end plates, exhaust manifold, filters, filter media, flanges, gaskets, mounting plates, oil pans, pump drive shaft, sleeves, tubes, tube connectors, etc.

[2] 76 Fed. Reg. 36,409 (June 19, 2012).

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Our engines are of the highest quality. But today's diesel engine market is mature, global, and highly competitive. A wide range of sizes and applications of diesel engines, and their parts and components, are made by our competitors in Russia, China, India, Brazil, Mexico, South Korea, Europe, and many other countries. The leading edge technology for diesel engines deals with complying with ever stricter emissions regulations. The military requires less advanced and more widely available technology in their engines because they are typically exempt from emissions requirements. The parts and components modified are usually of low technology and modified for fit into the vehicle or accommodation of lower emissions requirements. Strict controls on the export and reexport of these widely available items in the context of today's global market does not appear to advance U.S. national security and foreign policy interests.

II. Discussion

A. Parts and Components affected by "specially designed."

One of Cummins' main business units, the Engine Division, designs and manufactures approximately 15 models of diesel engines, ranging from 1.4 to 95 Liters, for use in vehicles, rail, oil & gas equipment, vessels, and electrical power generators. Many engine series have parts, such as engine blocks, pistons, and valves, which are used interchangeably across different types of applications, such as vehicles, marine vessels, land electrical power generators, and marine electrical power generators. The vehicle engine applications range from pick-up trucks to buses to very large mining trucks.

The great majority of Cummins' products are for civilian use. Our business with the military is primarily marketed as commercial off-the-shelf ("COTS") products. However, due to the increasing differences between engines for commercial and military vehicles mainly due to emissions regulations and the unique requirements of fitting any engine into a vehicle (commercial or military) it is increasingly harder to support military applications with purely commercial products. Cummins does manufacture and export certain items that currently are subject to U.S. export controls under both the ITAR and the EAR, because the parts are considered specially or specifically designed for a military vehicle.

Modification of minor components of a commercial diesel engine for a military vehicle, whether combat or non-combat, is often done to enable the engine to fit into and connect with the vehicle. These modifications do not affect the functionality of the

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vehicle's weapons systems, armor, night vision equipment, or communications systems. The modifications simply enable the engine to be installed in the military truck and run as required.

Cummins does not make any engine that consists entirely of parts and components that are specially/specifically designed or modified for a military application. For all of our engines supplied to the military, the majority of their parts and components come from the commercial sector. They were designed, developed, tested, and proven in civilian uses. Only a small percentage of parts and components need to be redesigned or modified for installation in a particular military truck. Even then, the necessary changes typically are relatively minor. Below are examples of these modified components and how they would be treated by the proposed "specially designed" definition.

1. Brackets/Supports/Braces

A common part specially/specifically designed for military vehicles are brackets/supports/braces. The dimensions of these parts could be changed for the engine to fit into the vehicle's engine compartment or to fit sub-components (e.g., actuator, fuel pump, turbo charger, etc.) properly into the vehicle's engine compartment. Applying the proposed "specially designed" definition to these parts would appear to result in a possible NS level control.

A bracket could be caught in the proposed "specially designed" definition under paragraph (a)(2) "Is a part or component necessary for an enumerated or referenced commodity or defense article to function as designed."[3] The brackets are required for an engine to fit properly into the military vehicle, which is required for the defense article (military vehicle) to function as designed.

It is then necessary to work through the elements of paragraph (b) of the proposed definition to determine if these apply and the bracket would not be "specially designed." Paragraph (b)(2) "Is a single unassembled "part" that is of a type commonly used in multiple types of commodities not enumerated on the CCL or the USML, such as threaded fasteners (e.g., screws, bolts, nuts, nut plates, studs, inserts), other fasteners (e.g., clips, rivets, pins), basic hardware (e.g., washers, spacers, insulators, grommets, bushings, springs), wire, and solder"[4] may apply, but it is not clear. A bracket/support/brace is "a single unassembled "part" that is of a type commonly used

[3] 76 Fed. Reg. 36,409 (June 19, 2012).
[4] Ibid.

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in multiple types of commodities not enumerated on the CCL or the USML." With varying dimensions, these types of brackets/supports/braces are used in every type of vehicle from an EAR99 pick-up truck to an armored military vehicle.

While Cummins believes that these brackets/supports/braces are analogous to the cut-to-length nut plate used in the Proposed Rule's example of a "part" excluded under paragraph (b)(2),[5] it is unclear if the brackets/supports/braces would fit into any of the examples listed in (b)(2), "threaded fasteners," "other fasteners," "basic hardware," "wire," and "solder." Does BIS intend that an item must fall into one of these example categories or be specifically listed in parentheses following these example categories in order to meet the requirements of paragraph (b)(2)?

If brackets/supports/braces for engines going into military vehicles do not meet the requirements in paragraph (b)(2), they would be "specially designed" and be classified as ECCN 0A606.x. Proposed ECCN 0A606.y.11 enumerates "latches and hinges," which are similar to brackets/supports/braces but do not seem to be the same.

2. Oil Pans

The dimensions of an oil pan can be changed to properly fit into a vehicle's engine compartment, accommodate or avoid specific vehicle components, or other similar reasons of fit into the vehicle. Cummins currently controls some oil pans under ECCN 9A018 or USML Category VII(g) because the dimensions are modified for military vehicles. Similar to the example above, the proposed "specially designed" definition may result in oil pans being considered "specially designed" and controlled at an NS level.

An oil pan modified to fit into a military vehicle would be caught by paragraph (a)(2) of the proposed definition, because it is necessary for the defense article (military vehicle) to function as designed. After working through paragraph (b)(2), an oil pan is a "single unassembled "part" that is of a type commonly used in multiple types of commodities not enumerated on the CCL or the USML," as every type of vehicle has an oil pan.

While Cummins believes that these oil pans are analogous to the cut-to-length nut plate used in the Proposed Rule's example of a "part" excluded under paragraph (b)(2), an oil pan would not clearly fit into any of the example categories given in paragraph (b)(2), and it is unclear if an item must fit into one of these example categories or be

[5] 76 Fed. Reg. 36,409, 36,414 (June 19, 2012).

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specifically listed in parentheses following these example categories for paragraph (b)(2) to apply.

If paragraph (b)(2) were not to apply to an oil pan modified for a military vehicle, none of the other subparagraphs in (b) apply, resulting in a classification of proposed ECCN 0A606.x and control at an NS level. Oil pans are not specifically listed in Proposed ECCN 0A606.y.

3. Dipsticks and Dipstick Tubes

The size and shape of dipsticks and dipstick tubes may be modified to allow easier access to the dipstick, avoid vehicle components, or other similar reasons of fit into the vehicle. Cummins currently controls some dipsticks under ECCN 9A018 or USML Category VII(g) because the dimensions are modified for military vehicles. A dipstick may also be considered "specially designed" under the proposed definition and therefore be controlled at an NS level.

Assuming that a dipstick would be caught by paragraph (a)(2), paragraph (b)(2) is the most likely applicable subparagraph while working through paragraph (b), because a dipstick is a part that is "commonly used in multiple types of commodities not enumerated on the CCL or the USML". However, paragraph (b)(2) would not appear to apply because a dipstick is not a "single unassembled "part."" None of the other parts of paragraph (b) would appear to apply. Therefore, a dipstick with modified dimensions to fit into a military vehicle could be considered to be "specially designed" and under the proposed regulations would be controlled under ECCN 0A606.x. A dipstick is not specifically enumerated under ECCN 0A606.y.

Cummins believes brackets, supports, braces, oil pans, dipsticks, and other similar types of components such as those listed in footnote 1 above are "simple or multi-use parts" that are used on all vehicles whether commercial or military. These parts are low technology and could be easily made or designed by almost any country. The primary difference between one of these parts in a commercial vehicle and a military vehicle are small dimensional changes for size, fit, and compatibility into a specific vehicle. If the U.S. government determines these types of parts should not warrant significant export controls, then objective (v) of the proposed "specially designed" definition may not be met.

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B. Technology controls on parts "specially designed."

As an engine manufacturer, Cummins maintains a database of technical engineering drawings for all of its engines, major assemblies, components, and parts, down to the level of the smallest bolt, washer, and bushing. We have hundreds of thousands of these drawings. Cummins has many teams of engineers who must review technical drawings. These teams are composed of employees recruited from a highly skilled, highly diverse workforce. The engineers need to review technical drawings for a variety of design, development, manufacturing, repair, and quality-control reasons. Cummins engineers also need to share technical data with a vast array of suppliers of minor parts and components.

For a technical drawing of a dipstick modified for a military vehicle and classified as ECCN 9E018, USML Category VII(h), or potentially under proposed ECCN 0E606, Cummins must maintain strict access controls, apply for multiple deemed export licenses, possibly apply for export licenses or other agreements for manufacturing or supplier selection, create separate systems and IT infrastructure, and work with small suppliers to implement an export compliance program for manufacturing of "specially designed" dipsticks. These technical drawings subject to strict access controls and licensing typically reveal little, if anything, about how to "develop," "produce," or "use" a military vehicle. The parts are controlled only because they were "specially designed or modified" for a military vehicle. Technology relating to the rest of the engine might be EAR99.

This special treatment adds costs to dipsticks for military applications and uses government resources in the many licensing aspects of developing, manufacturing, and storing technical data for a dipstick with small modifications for a military vehicle. The importance of the technology for a dipstick or other similar simple components does not seem to warrant the resources required by the company or the government to comply with current or proposed export controls. A company supplying primarily commercial markets must make a cost benefit analysis of installing and maintaining separate infrastructure to handle the compliance associated with protecting this technology. If a subsidiary, manufacturing plant, or supplier is only handling modified dipsticks or other similar technology then this can result in turning down business or passing on costs to the end user in order to prevent unauthorized releases of dipstick technology.

It is our understanding that license exception STA is designed to provide relief from some of the burdens described above associated with items having less national security concerns. For the items previously described that may be classified under proposed

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ECCN 0A606.x, license exception STA would provide minimal relief. The deemed export licensing burden would remain the same as the vast majority of individuals who are currently licensed and interact with the controlled technology through various commercial processes have a nationality (e.g., India) that is excluded from license exception STA for 0E606 technology of 0A606.x items. More importantly, the burden of creating separate systems, processes, and IT infrastructure outside of commercial business practices to control the technology of a potentially controlled modified dipstick or other simple multi-use items is much greater than any licensing burden incurred for the hardware or technology.

III. Conclusion

Cummins supports the efforts of export control reform and believes there could be benefits for manufacturers and national security, but certain issues remain open under the proposals, especially with regards to minor commercial parts and components modified for a military application.

Cummins specifically recommends that:

- the proposed "specially designed" definition be clarified in paragraph (b)(2) to make it clear if an item must fit into one of the example categories to be excluded from the definition of "specially designed" by reason of paragraph (b)(2), and if so, that more example categories be added to paragraph (b)(2) to make it clear the items of the type described in Section II and footnote 1 above would be included, and/or
- the items described in Section II above be specifically enumerated in the proposed ECCN 0A606.y.

Thank you for the opportunity to comment on the Proposed Rule. If we may be of assistance in providing for your review further technical or foreign availability information about our products, please let us know and we would be happy to assist.

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Respectfully Submitted,

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