From: Zimmer, Justin (US SSA) <justin.zimmer@baesystems.com>
Sent: Monday, July 23, 2012 5:01 PM
To: PublicComments
Subject: RIN 0694-AF58 - Comments from BAE Systems, Inc.

BAE Systems, Inc. respectfully submits the following comments to RIN 0694-AF58: Revisions to the Export Administration Regulations (EAR): Control of Personal Protective Equipment, Shelters, and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML).

Proposed Amendments to Supplement 1 to Part 774 The Commerce Control List:

ECCN 1A005: The Department of Commerce proposes the following language to describe the items to be controlled under this ECCN:

a. Soft body armor not manufactured to military standards or specifications that provide ballistic protection equal to or less than NIJ level III (NIJ 0101.06, July 2008).

b. Hard body armor plates that provide ballistic protection less than NIJ level III (NIJ 0101.06, July 2008).

BAE Systems supports the efforts of the Department of Commerce and Department of State to establish a consistent definition of "specifically designed" within the CCL and the USML. The proposed item description for1A005 uses the term "military standards or specifications" without defining them or limiting them to performance specifications of the item to be controlled. It would be better to use the term "not 'specifically designed'" to military standards or specifications to ensure a consistent standard for product classification by industry.

BAE Systems is also concerned that the term "or national equivalents" has been eliminated from the description of hard body armor plates to be controlled. The current description provides useful guidance for U.S. exporters working with foreign origin product that may not be NIJ rated. We recommend including in the proposed description the phrase, "or foreign national equivalents".

ECCN 1A613: The Department of Commerce proposes the following language to describe certain items to be controlled under this ECCN:

d.1. Soft body armor and protective garments manufactured to military standards or specifications that provide ballistic protection equal to or less than NIJ level III (NIJ 0101.06, July 2008); or

d.2. Hard body armor plates that provide ballistic protection equal to NIJ level III (NIJ 0101.06, July 2008).

Note:

See ECCN 1A005 for controls on soft body armor and protective garments not manufactured to military standards or specifications and hard body armor plates providing less than NIJ level III protection. For body armor providing NIJ Type IV protection or greater, see USML Category X(a)(1).

Both d.1. and the explanatory note use the language "manufactured to military specifications" without defining them or limiting them to performance specifications of the item to be controlled. It would be better to use the term 'specifically designed' to military standards or specifications to ensure a consistent standard for product classification by industry.

Proposed revisions to EAR 740.9 and EAR 740.14 to allow certain exports of body armor under license exceptions TMP and BAG.

In the notice of proposed rulemaking, the Department of Commerce is undertaking an effort to create license exceptions for the export of body armor similar to those described in ITAR 123.17(f) and (g). It has been the experience of BAE Systems that the exemption requirement for an inspection by a U.S. customs officer to be made prior to export renders the exemption essentially un-useable for most U.S. businesses from a logistics standpoint. Employees otherwise under contract to the U.S. Government often obtain their issued PPE at locations other than their point of exit from the United States. At this point, the PPE is placed into checked baggage and cannot be accessed by the employee to obtain the required inspection.

When developing the proposed language for the use of the BAG and TMP license exceptions, BAE Systems, Inc. urges the Department of Commerce to recognize the practical logistical requirements as well as the differing procedures of the U.S. Government agencies involved (The Department of Defense and The Department of Homeland Security through CBP). Without a license exception that is useable given the logistical realities of these exports, it will be necessary for exporters to obtain licenses for the export of PPE carried by their employees under U.S. Government contracts.

The use of licenses as an authority for these PPE exports is not an ideal solution. When used to authorize these transactions, historically there has been a significant risk for administrative errors specifically related to decrementing the licenses. While the practical nature of these exports (direct, in-theater support of U.S. military forces) presents a minimal risk to national security, U.S. exporters are required to resolve these violations through the Voluntary Disclosure Process. A proactive effort to ease use of the exception in cases where the risk to national security is minimal would lessen the potential burden of reporting to the regulatory agency situations where PPE licenses have not be properly decremented by CBP.

BAE Systems, Inc. also supports revising the proposed rule to expand the TMP and BAG exceptions to allow for reexports and retransfers to accommodate re-deployment of employees under government contract and to accommodate requests from the U.S. Government to leave PPE owned and issued by the U.S. Government overseas for re-issue by the U.S. Government to other contractor employees.

BAE Systems, Inc. wishes to thank the U.S. Department of Commerce for the opportunity to provide comment on these proposed regulations. Should you have any questions about these comments, please feel free to contact us directly.

Sincerely,

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