From: "Hill, Greg (SA-1)" <ghill@drs.com>
To: PublicComments@bis.doc.gov
Date: Tue, Feb 8, 2011 7:54 AM
Subject: Federal Register Notice RIN 0694-AF03

Attached is the public comment from DRS Technologies to the Proposed Rule for the Strategic Trade Authorization exception.

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CC: WARVIN@bis.doc.gov

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

7 February 2011

Regulatory Policy Division
Bureau of Industry and Security, Room 2705
U.S. Department of Commerce
14th and Pennsylvania Avenue
Washington, DC 20230

Subject: Response to Proposed Rule for the Strategic Trade Authorization License Exception – 75 FR 76653

Dear Sir or Madam:

DRS Technologies, Inc. is fully supportive of the U.S. Government efforts to reform the regulations and systems for controlling exports. As a 10,000 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.

The proposed Strategic Trade Authorization (STA) exception is a sensible approach towards aligning export risk with regulatory burdens and national security concerns. It permits eligible low risk items to be shipped to allies and friendly countries under a process that provides regulator insight to the transaction and explicitly notifies end-users of their obligations regarding re-export and in-country transfers, while at the same time removing tedious individual licenses. In addition to STA, BIS should develop licensing policies for items in the proposed Tiers 2 and 3 that provide additional flexible authorization mechanisms such as validated end user, intra-company and program licensing, and use of an "open license" similar to that used in the United Kingdom.

This new licensing mechanism moves away from a license-by-license approach and is a welcomed step forward in supporting the President's export reform initiative. While we support the concept of STA and appreciate the work of BIS and the interagency team, the proposed exception has a few short comings that will unnecessarily limit its use and therefore reduce its effectiveness. For example, there are several ECCNs not included in the proposed rule that appear to easily meet the criteria based on availability not only from regime partners, but from many global sources. Additionally, some of the requirements for marking and notification appear to be duplicative and add little value in the area of national security.

We are concerned that the STA, while useful, is too conservative. We offer this concern in light of comments provided by government officials stating that the STA is a "conservative tier 2 licensing policy" and that the STA will replace the current GBS license exception which will no

longer exist once the Commerce and State Departments merge their respective control lists. As proposed, the Commerce Department expects the STA exception to reduce its licensing burden by 3,000 licenses, while this is not insignificant, it does not represent a significant portion of the low-risk licensing volumes currently facing BIS. A few examples for how the STA exception appears overly conservative are the exclusion of ECCNs 6A002, 6A003, and 9A018. While there are very sensitive portions of 6A002 and 6A003, there are other parts of these ECCNs that have significant foreign availability in both regime partner and non-regime partner nations. Equivalent non-space qualified focal plane arrays in 6A002a2 and 6A002a3 are available from several European manufacturers. The cameras containing those focal plane arrays, 6A003b, are currently available world-wide from vendors in Europe, the Middle-East, the Pacific, and most notably China. Regarding 9A018, the ECCN covers everything from military trainer aircraft to military trucks and trailers. The items in 9A018b are non-combat ground transport vehicles and trailers, which similar to the items in 6A002a2, 6A002a3, and 6A003b, have world-wide availability. We recommend the ECCNs 6A002a2, 6A002a3 be included in STA 1 and 6A003b and 9A018b be included in STA 2. Additionally, we recommend the evaluation of other ECCNs, beyond the above for inclusion in this new exception.

Regarding the additional requirements placed on industry to be able to use STA, the proposed rule will require us to provide: 1) the export control classification number (ECCN) to the consignee; 2) a prior consignee statement containing the ECCN, an understanding that the items/technologies are not eligible for the APR license exception, and a statement that the goods cannot be exported contrary to U.S. export control restrictions, among others; and 3) a destination control statement. This will require some changes to current internal control plans, documents, and training protocols. We currently provide destination control statements and have processes in place regarding export, re-export, or transfer. The additional requirements cited in this proposed rule appear to be duplicative of requirements already existing in the EAR (§758.6) and unnecessarily directive of how we meet the requirement in the EAR. We would ask that these additional requirements be removed.

A third concern is with the lack of clarity or consistency with other provisions of the EAR. First, as part of the prior consignee statement, consignees are required to state that they will only use the items/technologies for "civil end use" purposes. The proposed rule defines "civil end use" as an end-use other than a military end-use as defined in section 744.21(f) or a proliferation activity described and prohibited by part 744 of the EAR. Section 744.21(f) defines a "military end-use" as including incorporation into an ECCN ending in A018. So, exporting brake pads and axles for incorporation into a trailer controlled under 9A018 would not be eligible under STA. This definition essentially takes the definition from the 2007 China End-Use Rule and applies the foreign policy behind that rule to a significantly larger group of countries that are not subject to the same foreign policy controls as China. This application is not consistent with treating countries in accordance with our foreign policy. Clearly our foreign policy objectives for STA countries are vastly different than with China.

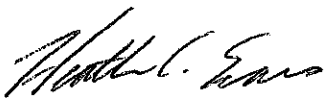
In addition, the proposed rule requires manufacturers to list the destination control statement on all export documents whereas section 758.6 of the EAR only requires the destination control statement to "be entered on the invoice and on the bill of lading, air waybill, *or* other export control document that accompanies the shipment from its point of origin in the United States to

the ultimate consignee or end-user abroad." We believe the proposed rule should be consistent with section 758.6 and, therefore, the "and" in the proposed rule should be changed to an "or."

In conclusion, we sincerely appreciate the opportunity to provide comments on the STA exception. We are very supportive of new licensing policies and encourage BIS and the Administration to be make changes to the STA to increase its utility and ensure its consistency with the EAR.

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

Sincerely,



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