September 13, 2011

Regulatory Policy Division
Bureau of Industry and Security
Room 2099B
US Department of Commerce
14th St. and Pennsylvania Ave., NW
Washington, DC 20230

RE: RIN 0694-AF17: Proposed Revisions to the Export Administration Regulations (EAR): Control of Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML)

On behalf of the National Defense Industrial Association (NDIA), which is comprised of 1,766 corporate and 90,512 individual members, I appreciate the opportunity to submit these comments on the proposed rule regarding revisions to the Export Administration Regulations (EAR) for the Control of Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML).

NDIA is America's leading defense industrial association promoting national security and is a non-profit 501(c)3 organization. The Association is devoted to the promotion of a vigorous, responsive, government and industry national security team and provides a legal and ethical forum for exchange of information between Industry and Government on a broad range of national security issues.

This proposed rule is a very positive step towards reforming the antiquated US export control system. The current regulatory approach of controlling every part and component that make up defense items places an incredible administrative burden on the US government to control such benign items as screws, bolts, and batteries while simultaneously placing an incredible burden on industry in the form of ensuring compliance with the regulations and severely limiting supply chain and market options.

The proposed rule establishes a framework to address the above deficiencies while ensuring sufficient controls and safeguards are in place for these articles, once under the control of the EAR. In reviewing the proposed rule we identified a few areas that we believe require further clarification or modification to help ensure the goal of successfully reforming the export control system is met.

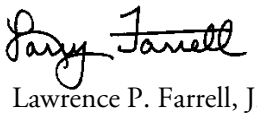
Our first concern is with the definition of "specially designed" in §772.1. The sub-paragraphs for this definition identify requirements that would determine an item to not be specially designed. There is no provision in these requirements for items that do not meet any of the requirements yet have already been determined to not be under the jurisdiction of the International Traffic in Arms Regulations (ITAR) and further, to be under the jurisdiction of the EAR and to be controlled at a level less than those identified for the new 600 series ECCNs (ex. classified as EAR99). We recommend adding an additional paragraph to this section that states "Items determined to not be under the jurisdiction of the ITAR (22CFR §§120-130) by a Commodity Jurisdiction Determination (re. 22CFR §120.4), and further to be under the jurisdiction of the EAR, are controlled by the ECCN issued with the jurisdictional determination or any subsequent CCAT issued by BIS."

Our second concern is regarding the definitions in §772.1 for "end-item" and "component." The definition of an End-Item is new to the EAR. The proposed definition is similar to the current ITAR definition in 22CFR §121.8. The key difference is the proposed definition adds the qualifier "stand-alone" in front of intended use. This additional qualifier for an end-item creates confusion, which is further compounded by the discussion in the definition of a component. The example cited is that for an automobile, components include the engine, transmission, and battery. The engine and transmission meet the definition of a component as they are only useful when used in conjunction with the end item. These two components are substantially transformed once installed in the automobile such that the automobile functions as an automobile. The battery however, undergoes no such substantial transformation. It is ready for its intended use as a power source regardless of installation site. What confuses this is the "stand-alone" qualifier in the proposed definition. As such, we recommend that "stand-alone" be removed from the definition of an end-item and that the example of a component be amended to use items that meet the proposed definition of a component.

Our third concern is with the proposed *de minimus* guidance for the 600 series items. There is a single *de minimus* threshold of 10 percent. The guidance does not provide any allowance for situations where *de minimus* content must be calculated for both 600 series and non-600 series articles. For example, in a situation where a foreign end item contains 1% 600 series items and 12% non-600 series. We are uncertain in this example if this article would be eligible for the 25% threshold currently in the EAR. We recommend the guidance be expanded to include situations where there is a combination of both 600 and non-600 series content.

We sincerely appreciate the efforts the administration has undertaken to reform the US export control system. We firmly believe that such efforts will help to improve both US government oversight and industry compliance efforts on truly critical defense items while greatly reducing the regulatory burden to US industry for benign, non-critical items. Focusing on those truly important items, rather than each and every item will help to increase our national security.

Sincerely and respectfully,



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