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Rockwell Automation

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Regulatory Policy Division
Bureau of Industry and Security
Room 2705
U.S. Department of Commerce
Washington, DC 20229

Re: Commerce Control List: Revising Descriptions of Items and Foreign Availability, Federal Register December 9, 2010 (Volume 75, Number 236)

Dear Sir or Madam,

Rockwell Automation is submitting comments in response to the Notice of Proposed Rulemaking ("NPRM") which was published in the Federal Register on December 9, 2010 (Volume 75, Number 236). The original Notice requested that comments be submitted by February 7, 2011.

Rockwell Automation commends the interagency task force for the work to support the Export Administration's Export Control Reform Initiative to reach the goals of a three tiered system, differentiate between the two current lists to determine which list an item is controlled on, and have two lists structurally aligned so that they can potentially be combined into a single list of controlled items.

Please accept our comments below on the advanced notice of proposed rulemaking which seeks public comment on how the descriptions of items controlled on the Commerce Control List (CCL) of the Export Administration Regulations (EAR) could be more clear and positive, as well as "tiered" in a manner consistent with the control criteria the Administration has developed as part of the reform effort. The notice also requests comments on the degree to which a controlled item provides the United States with a critical, substantial, or significant military or intelligence advantage, and the availability of the item outside certain groups of countries.

LISTEN. THINK. SOLVE.

Prior to presenting specific tier comments, Rockwell Automation supports the following principles that TechAmerica submitted on behalf of industry:

Policy Principles

- Consistent with the Administration's goal of avoiding an overly broad and complex export control system, the Administration should adopt positive lists that consist only of sensitive items that are susceptible to effective control. The positive list should apply only to end items, allowing controls on associated sensitive parts/components, software and technology to be applied as specified below.
- To this end, products, equipment, systems, parts, components, software and technology that are or will become widely available or accessible, or are otherwise not susceptible to effective control, should be classified under EAR99 except under very narrow and justifiable circumstances. Similarly, items should not be subject to Tiers 1-3 controls where broad foreign availability or capability exists.
- Restructure the CCL to align with the format of the revised USML. In particular, a CCL category should focus primarily on identification of end items that produce a significant, substantial or critical military or intelligence advantage. Parts, components, technology or software would only be subject to control as a subcategory of a listing for an end item, but only if they are peculiarly responsible for the specific features of the end item that produce a military or intelligence advantage (see specific criteria below).
- Considerations that should inform the Administration's proposed criteria for placing items within the 3-tier control structure should include:
    - An application of foreign availability that includes whether equivalent foreign items and capabilities exist, as well as other relevant factors, including but not limited to the degree to which an item is available or accessible through commercial channels outside the U.S.
    - Tier 1 and 2 controls should apply to items that have an inherent military or intelligence capability. In particular, the controls should apply to items with functions/capabilities that are peculiarly responsible for critical or substantial military/intelligence applications.
    - All other items subject to control under the 3-tiered structure should fall under Tier 3.
    - Items where companies hold CCATs or other rulings indicating products are EAR99 should continue to stand since items don't fall under any of the Tiers on the new control list.
    - Ensure that positive control list parameters for sensitive end items are predicated upon precise, clear, objective and positive criteria. If control metrics for an item cannot be articulated in objective, unambiguous and positive standards, the items should not be subject to Tier 1-3 controls.
- Technical export control parameters should be continuously reviewed with a view toward swiftly updating those parameters that are overtaken by technological advances, wide availability and foreign availability.

- The new 3-tier list structure should contain descriptions and criteria that avoid subjecting items to export controls that are more stringent than they are today. In addition, the removal of terms like "specifically designed" should not result in the broadening of controls.

- The new export control system should comport with multilateral agreements and disciplines.

Criteria for Controlling End Items

- An end item should only be controlled within with the 3-tiered CCL structure if it possesses characteristics that are directly related or essential to the creation of a critical, substantial or significant military- or intelligence-related advantage. Such items are contemplated in the Wassenaar Sensitive and Very Sensitive lists.

- An end item should fall under EAR99 if it is not directly related or essential to the creation of a military/intelligence advantage.

- An end item should also fall under EAR99 if it meets the wide availability, controllability and broad foreign availability guidelines stated in the second policy principle above. For example, scalar computers should fall under EAR99, given the broad foreign availability of such computers and advanced capabilities that exist outside the U.S., including China (see www.top500.org).

Criteria for Controlling Parts and Components

- Parts and components, such as semiconductors, should not be subject to a separate control category, but rather should be controlled in association with the end products, systems or equipment in which they are to be incorporated. In that case, the parts and components should only be controlled when peculiarly responsible for the specific features of an end item that produce a military or intelligence advantage[1].

- Parts/components that are not general purpose, or are not generally commercially applied, should fall within Tier 3 if they are: (1) specially designed for (i.e., used exclusively in) a defense article; and (2) peculiarly responsible for enabling military/intelligence applications. In the area of integrated circuits, only those devices considered by the industry as either application specific ICs (JEDEC definition of an "ASIC") or "custom" ICs (an integrated circuit developed or produced to conform to a single customer's unique requirements) and are peculiarly responsible for enabling military/intelligence applications should be controlled on the CCL and fall within Tier 3 when peculiarly responsible for the specific features of an item that produce a military or intelligence advantage. Parts/components should not fall within Tiers 1 or 2, given their inability to make a military/intelligence contribution without first being incorporated into downstream products, systems or equipment.

[1] Inconsequential characteristics such as radiation tolerance, quality screening, packaging, and temperature resistance should not be considered "peculiarly responsible" for the features of a military or intelligence end item and should not trigger control for semiconductors or integrated circuits.

- Parts/components that are general purpose or generally commercially applied, including ICs that are not ASICs or "custom" ICs, should be classified as EAR99. General purpose parts/components by themselves have no inherent military or intelligence capability; in addition, parts/components that are generally commercially applied are civilian in character and, hence, cannot by definition be peculiar to military or intelligence applications.

- Parts and components that meet the wide availability, controllability and broad foreign availability guidelines stated in the second policy principle above should fall under EAR99.

Criteria for Controlling Technology and Software

- Software and technology should only be controlled within Tiers 1-3 to the extent they are peculiarly responsible for enabling a feature of an end item that provides a critical, substantial or significant military- or intelligence advantage.

- Software and technology that are general purpose or generally commercially applied should be classified as EAR99. General purpose software and technology by themselves have no inherent military or intelligence capability; in addition, software and technology that are generally commercially applied are civilian in character and, hence, cannot by definition be peculiar to military or intelligence applications.

- Software and technology subject to the EAR that meet the wide availability, controllability and broad foreign availability guidelines stated in the second policy principle above should fall under EAR99.

- Tier 1-3 controls should not apply to "use" technology, including technology that is the minimum necessary for the installation, operation, maintenance (checking) and repair of those items which are not controlled or whose export has been authorized.

Definitions

For purposes of the above architecture, TechAmerica believes that the terms parts, components and end items should be defined as follows:

Part/Component – An input, part, piece, subassembly or ingredient of an end item.

End Item – A final combination of components/parts, and/or materials in the form of a product, system or piece of equipment that is ready for its intended use (e.g., ship, aircraft, magnetometer, launch vehicle, marine acoustic system, milling machine).

Rockwell Automation also supports NAM's (National Association of Manufacturers) overarching comments regarding this proposed revision as well, which include, but are not limited to the following at time of this submission:

1. The control list should reflect an overarching review of the USML and not a stovepipe approach.
2. Consistent Application of New Criteria
3. Need to Focus on Core Items that Directly Contribute to an Item/Technology's Military value
4. Need to Focus on Characteristics that Make the Technology or Item Unique in a Military Context

With regard to specific Commerce Control List items, Rockwell Automation recommends the following changes related to specific ECCNs as the CCL review continues forward:

PROPOSAL for Tier 3

Eliminate Category 3A225 and replace with below:

Frequency changers or generators having all of the following characteristics:

a. Multiphase Low Voltage (1000V a.c. / 1500V d.c.)
output capable of providing a power in the range between 40VA and 50 kVA, and

b. Capable of operating at an output frequency over 800 Hz

Remove the following criteria for control from the text:
Harmonic distortion as a criteria for control
Frequency control better than 0.1[0.2] %

Components and software able to circumvent the above condition1are controlled.

The following would not be included in any Tier:

Frequency changers or generators having all of the following characteristics:

a. Multiphase Low Voltage (1000V a.c. / 1500V d.c.) output capable of providing a power in the range below 40VA, and

b. Capable of operating at an output frequency at 800 Hz and under during a sliding slot of 24 hours are not controlled.

Remove the following criteria for control from the text:

Harmonic distortion as a criteria for control

Frequency control better than 0.1[0.2] % - Absolute frequency limits are hard coded into the frequency changer firmware and are not regarded as user defeatable.

Duty cycle limitation should not be used as control criteria since some existing applications could be negatively impacted as they require longer than 24 hour duty.

"Operational time at/above a defined target frequency" (similar wording to duty cycle limitation) should also not be used as control criteria.

Components and software related to above frequency changers or generators are not controlled.

Rockwell Automation looks forward to providing comments on future proposed regulatory changes as they become available with the understanding if the overarching policy/suggested guidelines are adopted specific ECCN criteria, as recommended above, should be removed altogether.

Regards,

Janet Reuter
Director, Global Trade Compliance