INTERNATIONAL
SAFETY EQUIPMENT
ASSOCIATION
ISEA

February 7, 2011

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1401 Constitution Avenue, NW
Room 2705
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Hillary Hess
Director
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Room 2705
U.S. Department of Commerce
Washington, DC 20230

Re: Commerce Control List: Revising Descriptions of Items and Foreign Availability; and

Export Control Modernization: Strategic Trade Authorization License Exception

Dear BIS Staff Members:

The International Safety Equipment Association (ISEA) is pleased to provide the following comments on the Advanced Notice of Proposed Rulemaking on the Commerce Control List and the proposed rule on the Strategic Trade Authorization license exemption.

ISEA is the national trade association for personal protective equipment, including respiratory protection, protective clothing and gloves, gas detection instruments and other types of personal safety equipment. The association is the secretariat for numerous American National Standards for personal protective and safety equipment.

I. a. Commerce Control List -- Comments on 1A004 Technical Notes 1 and 2

In its proposed rule on restructuring the CCL, the Commerce Department seeks to make each Export Control Classification Number (ECCN) positive by including "objective criteria...[and] precise descriptions, rather than broad, open-ended, subjective, catch-all, or design intent-based criteria' (75 FR 76665)

The regulations in 1A004 state that items "specially designed or modified" to protect against biological or radiological agents adapted for use in war or chemical warfare agents are covered under the ECCN.

ISEA believes the two Technical Notes at the end of 1A004 are vague and subjective and conflict with the regulatory text.

The first Technical Note at the end of 1A004 could be made positive, in accordance with the proposed rule. The current language of Technical Note 1 covers "*equipment and components that have been identified, successfully tested to national standards or otherwise proven effective...*" This phrase appears to ISEA as an example of the vague language the Commerce Department seeks to move away from.

In fact, BIS indicated its agreement about the vague nature of this language in a response to a request from 3M for an interpretation about the meaning of "identified" in Technical Note 1. In its response to 3M, dated September 17, 2010, BIS agrees that the word "identified" is not defined in the Export Administration Regulations. BIS states it interprets the word "identified" to mean "labeled or otherwise indicated by the manufacturer as being effective for protection against or detection of the materials, agents or 'simulants' listed in Technical Note 1."
ISEA asks that this definition become part of Technical Note 1.

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ISEA asks that this definition become part of Technical Note 1.

In addition, the other criteria in Technical Note 1, "*successfully tested to national standards or otherwise proven effective,*" are equally vague.

These two test criteria can be made more positive by stating that items covered by 1A004 must be "successfully tested by the manufacturer to national standards and proven effective by the manufacturer against biological agents 'adapted for use in war'; radioactive materials 'adapted for use in war'; or, chemical warfare (CW) agents...."

While the correspondence with 3M addressed respiratory protection, ISEA believes the proposed positive definitions for Technical Note 1 and 2 (see below) should apply to all items covered under 1A004, including respiratory protection, protective suits, gloves, shoes and detection systems.

In a similar vein, Technical Note 2 could be made positive by clarifying that a "simulant" is a substance or material used to specifically test a product (gas mask, protective suit, glove, shoes or detection systems) for protection against or detection of "biological agents 'adapted for use in war'; radioactive materials 'adapted for use in war'; or, chemical warfare (CW) agents." (Appendix A includes the current Technical Notes and ISEA's proposed changes to them.)

While some chemical warfare agents are well known, such as Sarin gas, it would make 1A004 more positive to list the CW agents to which the regulation applies.

Finally, we ask that at the next Wassennar Arrangement meeting, the U.S. delegation seeks to remove Technical Notes 1 and 2. The Technical Notes have confused and frustrated the regulated community and some in the regulating community.

1.b. ISEA Comment on the Commerce Department's Tier 3 Criteria

ISEA would like to express our concerns with the proposed CCL Tier 3.

ISEA believes that the criteria for Tier 3 appear to be substantially similar to current and previous USML criteria. What seems to be lost is commercial, dual-use nature of goods that still might require review and approval for export.

For example, fire fighters in the US use only self-contained breathing apparatus (SCBA) that have been approved by the National Institute for Occupational Safety and Health's (NIOSH) certification test standards for use against chemical, biological, radiological and nuclear challenges. The NIOSH-certified CBRN SCBA, as they are known, do not seem to fit into the newly proposed CCL tiers. These CBRN SCBAs were designed by fire fighters for firefighting. These devices are not SME (significant military equipment); their weight, duration of breathing air, and required training and maintenance make them useful to fire fighters in fire departments.

The spirit and intent of the CCL are gone when the Commerce Department begins looking at CCL items as SME. Tier 3 needs to retain its CCL-nature and not be converted to a reformed USML.

II. Comments on License Exemption STA

ISEA believes the Commerce Department must clarify that ECCNs with AT controls can still take advantage of proposed license exemption STA.

In proposing license exemption STA, on page 75 FR 76654, col. 3, BIS lists the 4 reasons for control that prevent an item from enjoying license exception STA. However, on page 76655, col. 1, BIS lists seven control requirements under which a product can use the proposed STA license exemption. AT controls

are absent in each grouping. ISEA understands that an AT license is needed only for shipments to AT-designated countries (Syria and Sudan) and neither one of these countries is listed in the STA proposed rule.

However, BIS should make clear that an AT designation will not prohibit an item from using proposed license exemption STA, when the only other reason for control is for National Security (NS). If this issue is not made clear, it will create substantial confusion in the regulated community, the export control community and the wider export industry.

Thank you for the opportunity to comment. Please contact me at 703-525-1695 if you have any questions about our comment or if you would like any additional information.

Sincerely,

Daniel I. Glucksman
Public Affairs Director

Appendix A

Proposed changes to Technical Notes 1 and 2 in ECCN 1A004

Current 1A004	Proposed IA004
1. *1A004 includes equipment and components that have been identified, successfully tested to national standards or otherwise proven effective, for the detection of or defense against radioactive materials "adapted for use in war", biological agents "adapted for use in war", chemical warfare agents, 'simulants' or "riot control agents", even if such equipment or components are used in civil industries such as mining, quarrying, agriculture, pharmaceuticals, medical, veterinary, environmental, waste management, or the food industry.*	***1.*** *1A004 includes equipment and components that have been* **labeled or otherwise indicated by the manufacturer as being effective for protection against or detection of the materials, agents or 'simulants' listed in Technical Note 1, and successfully tested by the manufacturer to national standards and proven effective by the manufacturer against or *for the detection*** *of radioactive materials "adapted for use in war", biological agents "adapted for use in war", chemical warfare agents, 'simulants' or "riot control agents", even if such equipment or components are used in civil industries such as mining, quarrying, agriculture, pharmaceuticals, medical, veterinary, environmental, waste management, or the food industry.*
2. *'Simulant': A substance or material that is used in place of toxic agent (chemical or biological) in training, research, testing or evaluation.*	***2.*** *'Simulant':* **substance or material used to specifically test a product (gas mask, protective suit, glove, shoes or detection systems) for protection against, or detection of, "biological agents 'adapted for use in war'; radioactive materials 'adapted for use in war'; or, chemical warfare (CW) agents in training, research, testing or evaluation.**