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Four (4) Pages Sent via email to:

publiccomments@bis.doc.gov

Timothy Mooney
Regulatory Policy Division / Room 2705
Bureau of Industry and Security
US Department of Commerce
1401 Constitution Ave., NW
Washington, DC 20230

Re: Revising CCL Descriptions / ECCN Addressed: 1A004

Dear Sir or Madam:

Smiths Group appreciates the opportunity to comment on the proposed changes to the Commerce Control List as set forth in the advanced notice of proposed rulemaking published in the Federal Register on December 9, 2010. This notice requested 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.

As a general principle Smiths supports the initiative's overall goals of:

- A three tiered system;
- Creating a "bright line" between the CCL and USML to help determine on which list an item is controlled; and
- Aligning the two lists structurally so that they can be potentially combined into a single list at a future stage of the reform process.

We believe that the development of a "positive list" to describe controlled items using objective criteria and the elimination of broad, open-ended, subjective, generic, or design intent-based criteria from the USML and the CCL will support the overall goals of export reform.

I. Make ECCN Clearer and More Objective: ECCN 1A004

The Smiths Detection business unit of Smiths Group manufactures and exports a range of products including nuclear, chemical and biological detection systems that are controlled under ECCN 1A004.c.3 because they detect or identify "Chemical Warfare Agents."

The relevant parts of ECCN 1A004 provide as follows:

> *1A004 Protective and detection equipment and components, not specially designed for military use, as follows (see List of Items Controlled).*
> *… .*
> *c. Nuclear, biological and chemical (NBC) detection systems, specially designed or modified for detection or identification of any of the following, and specially designed components therefor:*
>
> *c.1. Biological agents 'adapted for use in war';*
>
> *c.2. Radioactive materials 'adapted for use in war'; or*
>
> *c.3. Chemical warfare (CW) agents;*

The EAR does not, however, provide a definition of what is considered a chemical warfare agent. We presume that, at a minimum, chemicals listed in Category XIV of the USML would qualify as chemical warfare agents because they have been identified by the U.S. government as being specifically designed for military applications. What is less clear is whether the phrase "chemical warfare agents" is meant to include precursor chemicals listed in ECCNs 1C350 or 1C355.

We believe a case can be made for differentiating between "chemical warfare agents" and 1C350 chemicals by examining the existing language in 2B351 which covers toxic gas monitoring systems that are designed for use in chemical plant environments. This ECCN distinguishes between the two when it uses the operative conjunction "or" in the following description: "Designed for continuous operation and usable for the detection of chemical warfare agents **OR** chemicals controlled by 1C350 at concentrations of less than 0.3mg/m^2." (Emphasis added) This description is instructive because of the distinction between "chemical warfare agents" on the one hand and 1C350 chemicals on the other. This indicates 1C350 precursors are different than "chemical warfare agents."

We believe Commerce should clarify the definition of "chemical warfare agent." One option would be for it to add language to 1A004.c.3 that specifically

references chemicals listed in Category XIV of the CCL. Alternatively Commerce could add a technical note to the ECCN.

II. Tiering Methodology and Application to ECCN 1A004

We believe that the Administration's Tiering methodology applies very well in the ECCN 1A004 context. ECCN 1A004 controls, *inter alia*, equipment that detects nuclear, biological, and chemical warfare agents and materials as well as trace detection systems used to identify the presence of certain explosives. Similar equipment is controlled under Category XIV(f)(2) of the USML. Though the substance being detected may be something that has been "adapted for use in war" the equipment itself will still fall under 1A004 so long as it is not something that is built to used the field of battle (e.g., ruggedized).

We propose the following three Tiers which are in accordance with the criteria listed in the Federal Register notice and other material regarding the Administration's export reform initiative:

Tier 1

Smiths Detection concedes that there is some detection equipment with capabilities and characteristics that afford tactical advantage for detecting toxic agents in the field of battle by the military. The difference between these items and those sold to other end-users such as police forces and emergency responders is that the military versions are ruggedized to withstand battlefield conditions. In some cases key parts, components or both are radiation hardened or designed to withstand EMP attacks. This type of equipment is also configured to detect chemical warfare agents listed in Category XIV of the USML. Such equipment can provide a critical military advantage and would logically fall under current USML Category XIV(f)(2).

For purposes of ECCN 1A004 a split between Tier 1 and Tier 2 should mirror a split between USML and CCL controls. In other words today Tier 1 of 1A004 would be empty because it is where Category XIV items will be listed after the USML and CCL are combined. Since 1A004 items are not specifically designed for military use and provide little tactical advantage even though they can detect toxic agents used in warfare. They should not be controlled in Tier 1, because they lack tactical performance capabilities that would confer an operational military advantage. Only the critical parts and components directly related to the additional military performance characteristics of such items should also be controlled at this Tier level. To the extent that parts and components are identical to those for Tier 2 items, Tier 2 control should apply.

Tier 2

We believe that equipment that can detect and identify chemical warfare agents but that which itself does not meet objective performance criteria mentioned above that would make them suitable for use in the field of battle should fall under Tier 2. Even though this equipment may be advanced technologically and be capable of detecting the chemical warfare agents listed in Category XIV of the USML the fact that it would have limited utility in harsh conditions make this equipment less significant from a military advantage perspective. However, since such items are useful for homeland security and emergency responders or other non-tactical military applications, they should be subject to intermediate level of export control. Only critical parts and components directly related to the ability of Tier 2 items to detect Category XIV agents should be controlled in Tier 2.

Tier 3

We believe that many non-critical parts and components of items covered by Tier 1 are a logical fit for Tier 3. Though these parts and components may go into a Tier 1 item on their own they provide very little, if any, strategic military advantage.

Items Not Covered by any Tier

We believe parts and components for Tier 2 items that are not directly related to the ability to detect Category XIV agents should not be subject to control, because they are generic not responsible for the detection capabilities.

* * * *

Once again we appreciate the opportunity to comment on this advanced notice of a proposed rule and we applaud the Administration for moving forward with this important initiative. If you have any questions or would like additional information please do not hesitate to contact me at 240-686-2362.

Respectfully submitted,

Digitally signed by E.J. Prior
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