



January 18, 2012

PM/DDTC, SA-1, 12th Floor
Directorate of Defense Trade Controls
Office of Defense Trade Controls Policy
Bureau of Political Military Affairs
U.S Department of State
Washington, DC 20522-0112
Submitted via <http://www.regulations.gov/>

Re: ITAR Amendments – Category VII (RIN 1400–AC77)

To Whom It May Concern,

I am writing on behalf of the Association of University Export Control Officers (AUECO), a group of senior export practitioners at twenty two accredited institutions of higher learning in the United States. AUECO members monitor proposed changes in laws and regulations affecting academic activities, and advocate policies and procedures that advance effective university compliance with applicable U.S. export/import and trade sanctions regulations.

AUECO is specifically interested in contributing to the export control reform effort in order to ensure that the resulting regulations do not have a disproportionate impact on academic pursuits. As a result, AUECO is providing the following comments in response to the Department of State (DoS) proposal to amend the International Traffic in Arms Regulations (ITAR) to revise Category VII (Ground Vehicles) of the U.S. Munitions List (USML) to describe more precisely the military vehicles and related defense articles warranting control on the USML.

AUECO appreciates the consideration given by the Directorate of Defense Trade Controls to the comments submitted in response to the initial proposed rule (Federal Register, 10 December 2010, Vol. 75, No. 237, pp. 76930-76935). In particular the removal of subpart (c) Materials from Category VII will allow US universities to continue important research programs in areas of material science and engineering. Fundamental research in these areas is crucial for the continued advancement of the field of protective technologies as it leads to the identification and creation of new materials and combinations of materials that warrant further study and development for use in armor systems.

The removal of the generic “unmanned ground vehicles” capable of off-road or amphibious operation (listed as (a)(1)(vii)(C) in the original proposed rule) from the list of items controlled is appreciated. Sections (a) through (e) in the new Category VII appropriately focus the controls on those capabilities and functions of the vehicles that are inherently military rather than whether they are manned or unmanned. Likewise, AUECO understands and supports the need to control kits “specially designed” to convert such vehicles to have unmanned or driver-optional capabilities as such modification would not change the inherently military capability or function of the vehicle.

Although AUECO finds the revised Category VII proposed rule to be a considerable improvement, both in terms of clarity and scope, on the initial version released for public comment in December 2010 further improvements can still be made. The following are our recommendations for changes that would improve the clarity of the final regulations.

Concerns with Lack of Relevant Definitions

AUECO is concerned that several relevant definitions that are necessary to establish a “positive list” with a “bright line” between what is controlled on the USML, and what is controlled on the CCL, are missing from the revised Category VII. As we have stated in previous comments, it is critical for each entry to contain precise and specific terms as well as all relevant definitions for those terms. Steps should be taken to avoid ambiguous entries and should instead provide qualifying and clear descriptive terms as much as possible. With these considerations in mind, AUECO carefully examined the proposed rule and is providing the following recommendation.

A clear definition is needed for the word “armed”. This is particularly important since this term is relied upon to describe which ground vehicles are subject to control under Category VII((b). While the language contained in §121.4(a)(1) implies that “armed” means “used as a platform to deliver munitions or otherwise destroy or incapacitate targets (e.g. firing lasers, launching rockets, firing missiles, firing mortars, firing artillery rounds, or firing other ammunition greater than .50 caliber)”, without a clear definition for that term, some ambiguity will remain. AUECO recommends that a note similar to that used to define “armored” for the purposes of §121.4(a) be added or alternatively that §121.4(a)(1) be re-written as follows:

(1) Are armed with lasers, rockets, missiles, mortars, artillery rounds, or other ammunition greater than .50 caliber or are “specially designed” to be used as a platform to deliver munitions or otherwise destroy or incapacitate targets;

A definition is needed for the term “inventory ground vehicles” used in §121.4(a). This is not a term of art readily understood by all exporters.

Likewise additional clarification is needed to interpret the term “rated class 60 or above” which is used in paragraph (g)(9) of Category VII. AUECO recommends replacing this term with a descriptive narrative (e.g. a bridge component that is rated to carry more than 60 tons for one-way traffic). However, if the term is to be retained then it should clearly reference the classification scheme (i.e. Military Load Classification) and provide a reference where exporters can find the specific characteristics or equations necessary for determining the “class” of a bridge component.

The Need for Harmonized Definitions

The forthcoming harmonized definitions under the export control reform initiative are vital to the interpretation of the proposed regulation and will substantially impact AUECO’s responses to this and other requests for comments. AUECO is concerned that without the final definitions of terms such as specially designed, public domain/publicly available, fundamental research, technology/technical data, and development we cannot appropriately analyze the scope and potential impact of the proposed rules under consideration.

AUECO recommends that the anticipated harmonized definitions be released for comment prior to releasing additional proposed rules containing USML Category revisions. We would further ask that the export community be afforded the opportunity to provide comments on previously closed proposed or final regulations when the proposed definition may affect the interpretation and/or implementation of the rule.

Closing

In closing, AUECO would like to express its appreciation for the opportunity to provide comments on these proposed changes. AUECO supports converting the USML into a “positive list”, and hopes that this step will reduce jurisdictional disputes and uncertainty. However, AUECO remains concerned that without a lack of reciprocal licensing exemptions under the EAR, moving items and technologies from the USML to the CCL may create an increased licensing burden for universities.

Sincerely,

A handwritten signature in black ink, appearing to read "Gretta N. Rowold". The signature is fluid and cursive, with a large loop at the end.

Gretta N. Rowold

Chair

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