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Sent via email to: publiccomments@bis.doc.gov

Timothy Mooney
Regulatory Policy Division
Bureau of Industry and Security
US Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

RE: Comments on Proposed Export Control Classification Number 1A607, RIN 0694-AF52

Dear Mr. Mooney:

Smiths Detection ("Detection"), a division of Smiths Group plc, appreciates the opportunity to comment on the proposed changes to the Commerce Control List ("CCL") of the Export Administration Regulations ("EAR"), as described in the Commerce Department, Bureau of Industry and Security's ("BIS") proposed rule published in the *Federal Register* on June 17, 2015 (80 *Fed. Reg.* 34562 (June 17, 2015)) (the "Proposed Rule"). The Proposed Rule proposed additions to the CCL to accommodate items slated for removal from Categories XIV and XVIII of the U.S. Munitions List ("USML") of the International Traffic in Arms Regulations ("ITAR") as part of the Administration's Export Control Reform initiative. Detection supports the goals of Export Control Reform, especially of establishing a "bright line" between the two current control lists to determine on which list an item is controlled. The development of "positive lists" to describe controlled items, using objective criteria, and the elimination, to the extent possible, 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.

Please accept our comments below on the Proposed Rule. Our comments address only the proposed transition of items currently classified under USML Category XIV.

USML Category XIV in its current form controls toxicological agents, including chemical agents, biological agents, and associated equipment, including, in paragraph (f)(2), equipment and its components, parts, accessories, and attachments, specifically

designed or modified for military operations, for the detection, identification, warning or monitoring of the chemical and biological agents listed in paragraphs (a) and (b). Examples of Detection items that are controlled under paragraph (f) (2) now are: Joint Program Chemical Agent Detectors which are worn and / or hand-carried by military personnel; stationary Biological Agent Detectors which were developed for the U.S. Army and are still in use by several foreign governments military organizations.

We read the Proposed Rule (in coordination with the State Department's proposed rule revising USML Category XIV) as transferring to BIS jurisdiction over all currently existing ITAR-controlled detection equipment specially designed for military use for the detection of agents listed in the proposed USML Category XIV (a) or (b), unless the detection equipment is classified or relates to classified information (classified items will remain covered in proposed Category XIV (f) (8)). All currently existing, non-classified, military detection equipment will be classified under the proposed Export Control Classification Number ("ECCN") 1A607.h, which will cover "'equipment' not controlled by USML Category XIV (f), and 'specially designed' for military use and for the detection or identification of materials specified by USML Category XIV(a) or (b). . . ." The only non-classified military detection equipment that will remain controlled on the USML should the State Department proposed revisions to Category XIV become final would be military detection equipment developed under Department of Defense ("DoD") contract or other funding authorization, which will be covered under proposed Category XIV(f)(2). However, Note 3 to the proposed Category XIV(f)(2) indicates that (f)(2) will only be applicable to contracts dated one year after the date of publication of the final rule, or later. Thus, when Category XIV becomes final, paragraph (f)(2) will be empty and will cover nothing for at least one year. That is, it seems that the only non-classified military detection equipment that will be included on the USML will be non-classified detection equipment that is developed under DoD funding in the future, and all non-classified detection equipment existing now, even if developed with DoD funding, would move to 1A607.

Because determining jurisdiction based on the date of DoD funding is a relatively novel approach to commodity jurisdiction, and because there was no discussion of this issue in either the preamble to the Proposed Rule, or the State Department's companion rule, we ask for BIS's affirmative confirmation that our understanding is correct. As we understand that BIS can only address the content of its own proposed rules, we ask that BIS confirm our understanding that the proposed 1A607.h will cover all currently existing, non-classified military detection equipment, and all future, non-classified military detection equipment developed under contract or other funding authorization, DoD or otherwise, up to 364 days after publication of the State Department final rule revising Category XIV.

The proposed 1A607.x, if it becomes final in its proposed form, will cover "'parts,' 'components,' 'accessories' and 'attachments' that are 'specially designed' for a commodity controlled by ECCN 1A607.e, .f, .g. or .j or for a defense article controlled by

USML Category XIV(f)" and not enumerated or otherwise described elsewhere on the USML. We note the omission of 1A607.h from the list of sections in paragraph .x for which parts, components, etc., are controlled. We are reading this as a proposed decontrol for all specially designed parts and components for all non-classified military detection equipment currently in existence (and thus excluded from the proposed Category XIV(f)(2) as explained above), unless such parts, components, etc., are covered elsewhere on the CCL. Again, because this would be a significant change from the current controls and was not specifically addressed in the preamble to the Proposed Rule, Detection asks for BIS's affirmative confirmation that this reading is correct. Detection reads the proposed 1A607.x as covering only those parts and components, etc., specially designed for military detection equipment developed in the future, under DoD contract or funding authorization dated one year or later after the State Department final rule revising Category XIV, or for military detection equipment that is classified and thus covered under proposed Category XIV(f)(8).

Omission of a reference to 1A607.h in the proposed 1A607.x is somewhat surprising in light of the inclusion in 1A607.x of a reference to 1A607.j. The proposed 1A607.j covers "equipment specially designed to interface with a detector ... controlled by the USML or a 600 Series ECCN, *and* collect and process samples of articles controlled in USML Cat. XIV(a) or (b)." Thus, the proposed 1A607.x would capture specially designed parts and components for equipment specially designed to interface with 1A607.h detectors, but it would not capture specially designed parts and components of the 1A607.h detectors themselves. Detection would welcome BIS's explanation of the policy rationale underlying the apparent decontrol of specially designed parts, components, etc., of all currently existing non-classified military detection equipment, in light of the retention of controls for specially designed parts, components, etc., of equipment designed to interface with such detection equipment. Detection submits that the specially designed parts, components, etc., of 1A607.j equipment designed to interface with 1A607.h detection equipment merit decontrol just as much as the specially designed parts, components, etc., of the 1A607.h detection equipment.

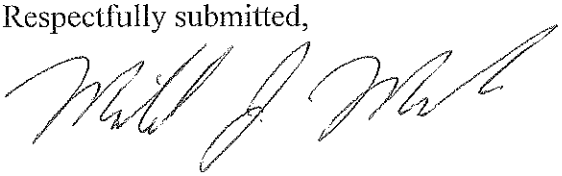
The control of military detection "equipment" in 1A607.h could, itself, also include control over certain components, etc., thereof. The definition of "equipment" provides that equipment "is a combination of parts, components, accessories, attachments, firmware, or software that operate together to perform a function of, as, or for an end item or system," but that "[e]quipment that does not meet the definition of an end-item is a part, component, accessory, attachment, firmware, or software." However, we note that, as "equipment" must first be a "combination" of parts, components, etc., "equipment" could never be just a single "part," because the definition of "part" makes clear that a part is a "single, unassembled element," and so could not be a "combination." Still, the definition of "equipment" is sufficiently broad to cover certain components, etc., otherwise meeting the definition. If the word "equipment" as used in 1A607.h is intended to cover components, etc., of detection equipment, in lieu of the same being controlled under 1A607.x, then it would be inconsistent with the treatment of 1A607.j

"equipment," the specially designed parts, components, etc., of which are expressly covered under 1A607.x. Such an interpretation could thus lead to confusion. If that was the intention, we submit that BIS should instead cover specially designed parts, components, etc., of 1A607.h items by reference to 1A607.h in 1A607.x, or else explicitly explain its intended interpretation of "equipment" in a note to 1A607.h, or at the very least, in the preamble to the final rule establishing 1A607. However, we think the better interpretation would be that the Proposed Rule would decontrol specially designed parts, components, etc., of existing non-classified military detection equipment, unless covered elsewhere on the CCL.

We would welcome BIS's elaboration in the final rule on the scope of 1A607.h and .x and whether our interpretation of the proposed language is consistent with BIS's interpretation, and with the control policy decisions underlying the Proposed Rule. Due to the degree of change between the proposed controls over military detection equipment and its specially designed parts, components, etc., and the novel way in which ITAR jurisdiction is proposed to be retained over certain non-classified military detection equipment developed in the future, we think discussion of the same in the preamble to the final rule or in notes to 1A607 is appropriate, and would help avoid confusion by members of the trade community.

Once again, we appreciate the opportunity to comment on the 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 Paula Ireton, Trade Compliance Officer for Detection, at (410) 612-2501 or paula.ireton@smithsdetection.com.

Respectfully submitted,



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