PPG Industries, Inc.
One PPG Place
Pittsburgh, PA 15272

August 13, 2015

Richard P. Duncan
Regulatory Policy Division
Bureau of Industry and Security
Department of Commerce
Room 2099B, 14th Street and Pennsylvania Ave. NW
Washington, D.C. 20230

Subject: Regulatory Change: RIN 0694-AF52

Dear Mr. Duncan,

PPG Industries Inc. (PPG) appreciates the opportunity to comment on the proposed changes to the United States Munition List (USML) and the Commerce Control List (CCL) under Federal Register notices 80 FR 34572 and 80 FR 34562 as they relate to Chemical Agent Resistant Coatings (CARC). CARC provides protection against chemical and biological agents as well as high corrosion resistance. CARC is available globally and is being used extensively by the commercial airline industry in Europe. For example, CARC (without IR absorbing properties) is used on the landing gear due to its superior corrosion resistance property.

Presently, the United States controls CARC under Category XIV(f)(5) of the USML: *"Equipment and its components, parts, accessories, and attachments specifically designed or modified for military operations and compatibility with military equipment as follows: (5) Collective protection against the chemical agents and biological agents listed in paragraph (a) and (b) of this category."*

Based on the Federal Register notices published in June 2015, PPG understands that, in the future, some CARC would be controlled under Category XIV(f)(7) of the USML and some under the newly created Export Control Classification Number (ECCN) 1A607.f of the CCL.

It further appears that only CARC qualified to three military specifications would be covered by the USML: **(f) Equipment or items, as follows: (7) Chemical Agent Resistant Coatings that have been qualified to military specifications (MIL-DTL-64159, MIL-C-46168, or MIL-C-53039),* while all other CARC coatings would be controlled under ECCN 1A607: *Military dissemination "equipment" for riot control agents, military detection and protection "equipment" for toxicological agents (including chemical, biological, and riot control agents), and related commodities (see List of Items Controlled). f. Protection "equipment" (including air conditioning units and protective clothing): f.1. Not controlled by USML Category XIV(f); and f.2. "Specially designed" for military use and for defense against: f.2.1. Materials specified by USML Category XIV (a) or (b); or f.2.2. Riot control agents controlled in 1C607.a.*

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Based on this understanding, PPG submits that this proposed rule should be reconsidered altogether and, if not, at least clarified.

- **Reason for Reconsideration:**

PPG manufactures and sells coatings and sealants worldwide to various industries, including the aerospace industry. Currently, PPG does not manufacture any CARC in the United States, but does in some European countries. As PPG has a global export compliance program, PPG has become aware of the classification and treatment of CARC under the export laws in the other countries where PPG operates. More specifically, PPG has received ratings from the U.K. and the French governments regarding CARC and has been informed that, in these countries, CARC is not listed as subject to control (*See* Exhibit A).

This disparity in classification puts American companies at a competitive disadvantage as multi-national companies would rather purchase non-controlled materials for their projects. It has also been cause for some confusion particularly among these multinationals as the non-controlled product they buy in Europe becomes controlled when shipped to or through the United States. Consequently, this classification inconsistency heightens the risk for unintentional violations.

Therefore, PPG strongly recommends that the United States aligns its export control classification of CARC with that of its allies.

- **Reasons for Clarification:**

If CARC must remain export controlled in the United States, then it would be best if all CARC continued to be under the control of one agency as the current proposal of splitting the jurisdiction of CARC to both the ITAR and the EAR will only complicate the jurisdiction and classification process.

More specifically, the proposed language does not address under which agency a product being developed to meet the properties in CARC should be controlled until it is tested and qualified appropriately. Would the product be classified under ECCN 1A607 during the development phase and then move to Category XIV(f)(7) after qualification?

Additionally, PPG would like to suggest that the proposed rules be revised to add clarity to the control requirements.

- **DDTC Notice:**
  - The world "qualifies" in the proposed USML definition [**(f) Equipment or items, as follows: (7) Chemical Agent Resistant Coatings that have been qualified to military specifications (MIL–DTL–64159, MIL–C–46168, or MIL–C–53039)*] should be clarified as this language would appear to exclude any CARC paint which would generally "meet the requirements" of one of these specifications but has not been "qualified" by testing and placed on the Qualified Product List (QPL).

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Qualification testing for CARC can only be done by a limited amount of testing sites due to the sensitivity of the chemical and biological agents. Therefore, when manufacturers need to modify a previously qualified CARC paint for color or gloss, they do not always re-test the new paint. Based on the proposed definition, the manufacturer may not consider the new paint as "qualified" in the strict sense of the word and therefore might not think of controlling it under Category XIV(f)(7) of the USML.

- The current proposal seems to be limited to three specifications: MIL-DTL-64159, MIL-C-46168 and MIL-C-53039 (which, by the way, is not the correct reference for that specification, it should be "MIL-**DTL**-53039"). It would therefore appear that paints that would be qualified to other specifications, such as the relatively new military specification for Powder CARC (MIL-PRF-32348) or any non U.S.-specifications, would not be subject to the ITAR but fall under the EAR. If this was not DDTC's intent, the rule should be clarified in order to better define which CARC paints fall under the USML.

- USML Category XIV(f)(5) is currently denoted as Significant Military Equipment ("SME"), however DDTC published guidance on September 14, 2009 which specifically states that CARC is not to be considered SME. It would be much clearer if DDTC would note this exception in its updated regulation. (*See* Exhibit B)

- On July 12, 2010, PPG was informed that the CARC properties of a coating having both CARC and Infra-Red properties determine the export controls applicable to the product. Therefore, such a product would be classified under USML XIV(f)(5) as opposed to XIII(j)(2). PPG suggests that this informal guidance be stated in the regulation for clarity and completeness.

- Finally, on May 13, 2014, DDTC also advised PPG, under case GC0887-14, that items controlled on the CCL do not become subject to the ITAR simply because they are painted with CARC. As this question is frequently asked of PPG by part manufacturers, it would be helpful if DDTC could add a statement into the USML re-affirming the above advice. (*See* Exhibit C)

➢ **BIS notice:**

PPG understands that all CARC that are not qualified to the three specifications identified in the USML would now be controlled for export under ECCN 1A607. This ECCN covers:
"Military dissemination "equipment" for riot control agents, military detection and protection "equipment" for toxicological agents (including chemical, biological, and riot control agents), and related commodities (see List of Items Controlled).

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f. Protection "equipment" (including air conditioning units and protective clothing):
f.1. Not controlled by USML Category XIV(f); and
f.2. "Specially designed" for military use and for defense against:
f.2.1. Materials specified by USML Category XIV (a) or (b); or
f.2.2. Riot control agents controlled in 1C607.a.

- As this definition only mentions the term "equipment" and does not specifically mention the term "Chemical Agent Resistant Coatings," it is not intuitive to industry that a paint would be included into this definition. It is even more confusing for the companies which are familiar with the EU military list as the definition under ML 7.f (see below) is similar to the definition of ECCN 1A607 but does not control CARC.

  f. Protective and decontamination equipment, specially designed or modified for military use, components and chemical mixtures, as follows:

  1. Equipment designed or modified for defence against materials specified by ML7.a., ML7.b. or ML7.d., and specially designed components therefor;

  Therefore, PPG suggests that the ECCN definition be updated to either include the term CARC or the word "material" which is more likely to be thought as encompassing coatings.

Again, PPG thanks both DDTC and BIS for this opportunity to comment on these proposed rules and welcomes any questions that may arise from these comments.

Please feel free to contact Mary Lynn Smith, Military Supervisor, at 412-434-2332 or at mlsmith@ppg.com if you have any questions or concerns.

Sincerely,

P. Raymond

Patricia Doublet-Raymond
Manager, Export Compliance

EXHIBIT A

Our Ref: ERE2010/001348
Your Ref: ECRR001-150410
SPIRE Doc Ref:475400

BIS | Department for Business Innovation & Skills

Mr Carson
PPG INDUSTRIES (UK) LIMITED
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Date: 24th May 2010

Export Control Organisation

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Enquiries +44 (0)20 7215 5000
Minicom +44 (0)20 7215 6740

www.bis.gov.uk
eco.spire@bis.gsi.gov.uk

Dear Mr Carson,

Thank you for your enquiry of 16th April 2010 for the export of goods, software and/or technology to France.

Goods, software and/or technology that we assess do not require an export licence from this Department are denoted by 'NLR' in the attached Schedule. This is because they are not listed as subject to control in any of the current legislation administered by the Export Control Organisation (ECO).

Other export controls may apply however. Please see website links found in the attached Supplementary Guidance.

Exporters are encouraged to consult the current export control legislation, to familiarise themselves with export controls and make their own evaluation of the need for export licences. These publications may be purchased from The Stationery Office (TSO) (0870 242 2345) or viewed online at The Office of Public Sector Information (OPSI) Internet site: http://opsi.gov.uk/legislation.

This assessment has been made taking into account the information given in your enquiry dated 16th April 2010 and attachments.

Yours sincerely

Validity unknown

Digitally signed by Licensing Casework Group
Date: 2010.05.24 09:09:08 BST
Reason: On behalf of the Secretary of State
Location: Department for Business, Innovation and Skills

Mr Peter Jessup
Export Control Organisation

BIS | Department for Business Innovation & Skills

Schedule of Goods Assessed

The following is our assessment of the goods enquired about.

#	Description	Control Entry	Relevant Legislation
1	8300 Series, High Solids Polyurethane Gloss Finish *Part No:* 8300******E	NLR	
2	8311 Series, High Solids Polyurethane Matt Finish *Part No:* 8311*****E	NLR	

EXHIBIT B

9/14/09

DSP-83 Requirements for Licensing of Chemical Agent Resistant Coatings (CARC) Paint – Category XIV(f)(5)

Effective immediately, the Directorate of Defense Trade Controls no longer requires a DSP-83 to accompany licenses for the permanent export of CARC Paint under USML Category XIV(f)(5). Although USML Category XIV(f) is designated as Significant Military Equipment (SME) in its entirety, the Department has determined CARC paint does not possess "substantial military utility or capability" (see 22 CFR 120.7(a)). This determination **does not** apply to other items in USML Category XIV(f).

When submitting a DSP-5 via D-Trade, the selection of any SME category in block 11 automatically identifies the item as SME and makes the DSP-83 a mandatory document. Follow these procedures to submit your license without the DSP-83:

- Enter "XIV(f)" in Block 11.
- When asked if a DSP-83 is attached – answer "NO"
- When further asked "If SME, and a DSP-83 is not attached, state why." – answer **"DDTC Web Notice 9/14/09 ref: DSP-83 for CARC."**
- Please **do not** attach a copy of this web notice to each license submission

Any questions or concerns should be directed to Tony Dearth, Chief of Space and Missile Technology Division, deartham@state.gov.

EXHIBIT C

United States Department of State

Bureau of Political-Military Affairs
Directorate of Defense Trade Controls

Washington, D.C. 20520-0112
MAY 1 3 2014

In Reply Refer to
DTC Case **GC 0887-14 (RE-ISSUE)**

Ms. Mary Lynn Smith
ITAR Supervisor
PPG Industries Inc.
One PPG Place
Pittsburgh, PA 15272

YOUR LETTER DATED: March 24, 2014
SUBJECT: Classification of "600 Series" Parts and Components Enhanced with Chemical Agent Resistant Coatings (CARC)

Dear Ms. Smith:

The Department of State has reviewed your request for a determination on the requirements, or lack thereof, for validated licenses involving "600" series parts and components that have been painted with CARC. The Directorate of Defense Trade Controls has determined that CARC coating on an item, in and of itself, does not provide a military capability warranting United States Munitions List control. Hence items that are controlled on the Commerce Control List, to include vehicles and equipment, do not become subject to the International Traffic in Arms Regulations simply due to the application of CARC paint. This finding is based on numerous Commodity Jurisdiction precedents spanning ten years.

Should you require further assistance on this matter, please contact Rick Koelling, (202) 663-2828 or KoellingRW@state.gov.

Sincerely,

C. Edward Peartree
Director
Office of Defense Trade Controls Policy