Huntington Ingalls Industries

December 8, 2015

Matthew S. Borman
Deputy Assistant Secretary for Export Administration
U.S. Department of Commerce
Regulatory Policy Division, Room 2099B
Bureau of Industry and Security
Washington, DC 20230

Subject: Federal Register Notice - RIN 0694-XC025 (Vol. 80, No. 196, October 9, 2015)

Dear Mr. Borman:

Huntington Ingalls Industries (HII) welcomes the opportunity to provide comment in response to the subject Federal Register Notice relating to Export Control Reform (ECR) and changes to the Export Administration Regulations (EAR). HII is America's largest military shipbuilding company and builder of the most complex ships in the world for more than 129 years in Virginia and 77 years in Mississippi. We are the sole builder of U.S. Navy aircraft carriers and amphibious warships, and one of two builders constructing nuclear-powered submarines and DDG 51 class destroyers. We also construct National Security Cutters for the U.S. Coast Guard. The ECCNs that control the majority of HII's products are 8A609, 8A620, 8A992 and EAR99. During the initial stages of ECR implementation, HII has identified a few sections of the EAR and CCL that could benefit from clarification, as they have caused confusion amongst our supplier community. Provided below is our commentary.

General Comments on ECR

HII, in general, has experienced little disruption to its export activity since ECR became effective on January 6, 2014 for Categories VI and XX and the newly created ECCNs 8A609 and 8A620. Due to the nature of our exporting activity, HII continues to obtain export authorizations under the Department of State's International Traffic in Arms Regulations (ITAR) for most of its technologies. Our total number of ITAR authorizations has remained relatively the same while our number of EAR export authorizations has increased, not having any active Commerce licenses for over 20 years prior to ECR. Our main export activities consist of technical exchanges along our supply chain and assistance involving foreign parties for products that fall under the U.S. Munitions List (USML) Category VI and XX as well as under ECCNs 8A609 and 8A620 that will be installed on USML-controlled Category VI and XX vessels. Due to the coverage of the definition of defense services, HII believes it will continue to obtain most of its export approvals from the Department of State.

The transition to the Commerce Control List (CCL) of lower level ship related parts and components that the Department of State has determined no longer warrant control on the USML has eliminated the need for obtaining DSP-5 export licenses to ship those parts and components to the U.S. Navy while in a foreign location. HII is able to utilize the benefits of license exception GOV[1] under the EAR as it provides more flexibility than previously realized under the ITAR.

Implementation of the Order of Review (Supplement No. 4 to Part 774) for "600 series" ECCNs has been a time-consuming effort that yielded a few new options for exporting but at the same time only provided limited enhancements to our overall export compliance program. To amplify, the availability of license exception GOV is both a positive and a negative. The license exception allows us to provide critical parts and components to the U.S. Navy stationed in foreign countries; however, the effort to classify all those parts utilizing the specially designed definition takes more time to complete than it did prior to ECR. Moreover, much granularity is needed to identify control levels of either 8A609.x or 8A609.y. Previously, we were able to group most of those parts into one USML category VI(f). On a positive note, once all the classification reviews are completed, the shipment is able to be processed fairly quickly under license exceptions in most cases.

Comments on the applicability of ECCN 0A919

ECCN 0A919 captures foreign-made products produced from "600 series" controlled technology. In following the Order of Review described in Supplement No. 4 to Part 774, it is unclear when this ECCN would ever apply. The classification process begins with a review of the "600 series" and in all probability would end there. Having a part built from "600 series" technology would presumably land that product in a "600 series" ECCN. We could not readily identify a situation when that product would ever escape the general language of 8A609.x/8A620.x and "specially designed".

Reference to 0A919 was added to the Related Controls section of ECCNs 8A609 and 8A620[2] and was identified as a non-substantive change. Agreed, its inclusion was non-substantive; however, its inclusion raises questions on when a product's classification would be released from 8A609 or 8A620 and move to 0A919. The existence of ECCN 0A919, as a whole, is concerning in that it could lead to multiple classifications with different control levels for one product simply based on where the product was manufactured. It could be interpreted that the government intends to treat foreign produced products differently, that is, with less restrictions, than those produced in the U.S. This ECCN's presence clouds the direction industry is to follow when advising the foreign party of the correct classification by which they are to control the product they produce from "600 series" technology.

HII requests that specific guidance be provided in the Related Controls section of ECCNs 8A609 and 8A620 as to when 0A919 would apply to products produced in a foreign country from 8E609 and 8E620 technology. Additionally, HII requests that specific details be added to a new ECR FAQ that address when 0A919 is to be used and update the Bureau of Industry and Security (BIS) website guidance entitled *General Prohibition No. 3: Direct Product Rule § 736.2(b)(3) of the EAR (as modified on 10/30/15)* accordingly.

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[1] See § 740.11 Governments, International Organizations, International Inspections under the Chemical Weapons Convention, and the International Space Station (GOV).
[2] Federal Register Notice Vol. 78, No. 130, July 8, 2013.

Comments on a potential gap of coverage between ECCN 8A609.a and VI(b)(3)

It is believed that the ECR changes left a gap in coverage for armed coastal, patrol, roadstead, and Coast Guard and other patrol craft with mounts or hard points for firearms of less than .50 caliber.

ECCN 8A609.a currently reads:	USML Category VI(b) currently reads:
a. Surface vessels of war "specially designed" for a military use and not enumerated or otherwise described in the USML. **Note 1:** 8A609.a includes: (i) Underway replenishment ships; (ii) surface vessel and submarine tender and repair ships, except vessels that are "specially designed" to support naval nuclear propulsion plants; (iii) non-submersible submarine rescue ships; (iv) other auxiliaries (e.g., AGDS, AGF, AGM, AGOR, AGOS, AH, AP, ARL, AVB, AVM, and AVT); (v) amphibious warfare craft, except those that are armed; and (vi) unarmored and unarmed coastal, patrol, roadstead, and Coast Guard and other patrol craft with mounts or hard points for firearms of .50 caliber or less.	(3) Vessels armed or specially designed to be used as a platform to deliver munitions or otherwise destroy or incapacitate targets (e.g., firing lasers, launching torpedoes, rockets or missiles, or firing munitions greater than .50 caliber);

These types of armed vessels aren't captured in ECCN 8A609.a which only includes unarmed patrol boats. Alternately, the USML does not positively list vessels capable of firing munitions < .50 caliber; VI(b)(3) specifically addresses .50 caliber or more. USML VI(b)(4) includes vessels that incorporate "Mission Systems"; however, firearms are not defined as a "Mission System" in the Note to paragraph (4). The Government may wish to explore where these types of vessels are to be captured, as the migration to a positive USML and application of the Order of Review results in these vessels defaulting to ECCN 8A992 with a low level of control. HII does not believe this is intended.

Comments and recommendations for 8A609.y and 8A620.y

An update to ECCNs 8A609 and 8A620[3] added *"parts", "components", "accessories", and "attachments" "specially designed" therefor* to the end of the heading for the .y paragraph. HII understood that this new language was meant to clarify that the commodities enumerated in the .y paragraph were inclusive of its parts and components; meaning that the .y listings should include only the higher level item and the specially designed parts and components therefor would not necessarily be identified separately. However, the .y descriptions were not amended to accommodate this new language as a few of the descriptions still include parts and components. HII recommends the following changes to further clarify the intent of the additional language to the .y heading and make the list of .y descriptions consistent.

[3] Federal Register Notice Vol. 79, No. 1, January 2, 2014.

Currently written y.2:

y.2 Filters and filter assemblies, hoses, lines, fittings, couplings, and brackets for pneumatic, hydraulic, oil and fuel systems;

Proposed: y.2 Pneumatic, hydraulic, oil and fuel systems;

Currently written y.7:

y.7 Potable water tanks, filters, valves, hoses, lines, fittings, couplings, and brackets;

Proposed: y.7 Potable water systems;

Deletion from .y

HII suggests that the classification of y.8 be removed entirely from ECCNs 8A609 and 8A620 as these items are adequately addressed in ECCN 3A611.y.

Currently written y.8:

y.8 Panel knobs, indicators, switches, buttons, and dials whether unfiltered or filtered for use with night vision imaging systems;

Proposed: y.8 [Reserved]

Additions to .y

In its comments provided to BIS as a response to the proposed rule establishing ECCNs 8A609 and 8A620[4], HII provided a recommendation to add several low level shipbuilding items to paragraph .y as it believed these items were of low importance in the process of building ships and relate to the comfort of the sailor rather than the military aspects or technological advantage of the vessels. BIS' response[5] to HII's recommendation identified that keeping these items at the higher level of .x *"provides the U.S. Government with insight into whether persons in certain countries have military vessels or need to have such vessels repaired. These controls give the U.S. Government the ability to control the flow of such parts, components, accessories, and attachments consistent with our national security and foreign policy objectives."* HII emphatically supports the U.S. Government's mission in our nation's security; however, we respectfully request that BIS reconsider the addition of the following items to .y as these items are only modified to the fit and function of the vessel and are used in every type of vessel regardless of the vessel's mission/purpose.

- Atmosphere control and monitoring equipment
- Environmental control and monitoring equipment
- Thermal insulation
- Trash handling systems
- Mooring, towing and dry dock equipment
- Anchoring systems
- Material corrosion and fouling control systems

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[4] Federal Register Notice Vol. 76, No. 247, December 23, 2011.

[5] Federal Register Notice Vol. 78, No. 130, July 8, 2013.

- Firefighting equipment, fire suppression systems, extinguishers
- Emergency water rescue equipment
- Bunks, lockers, and living/recreational quarter facilities
- Meeting and classroom facilities
- Shock rated electrical cable, cableways, wire, distribution panels, supply outlets, fixtures, and racks, mountings and clamps (meant to keep computers, office furniture in place)

In conclusion, HII supports the monumental efforts undertaken to implement ECR and applauds BIS' approach to fine-tuning the regulations. If you have any questions regarding these comments, please contact me at (757) 380-3683 or at sandra.cross@hii-co.com.

Sincerely,

Sandra R Cross
Corporate Director, International Trade Compliance
Huntington Ingalls Industries, Inc.