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August 1, 2012

Timothy Mooney
Regulatory Policy Division
Bureau of Industry and Security
U.S. Department of Commerce, Room 2099B
14th Street and Pennsylvania Avenue NW
Washington, DC 20230

Subject: RIN 0694-AF66, "Specially Designed" Definition Proposed Rule

Dear Mr. Mooney:

The Boeing Company (Boeing) welcomes the opportunity to respond to the referenced Proposed Rule.

The proposed definition of "specially designed" has evolved substantially from earlier iterations. We appreciate the effort of the Bureau of Industry and Security (BIS) in developing a definition for this important and previously-undefined term. Equally important, we note the consideration given to comments received from industry during the public review process and from the advisory groups at the Department of State and at the Department of Commerce.

Establishing a solid definition of "specially designed" that is the same in both the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR) will increase regulatory understanding for small and large exporters alike. Export control regulations are complex, and when clarity is maximized, processes can be streamlined, and compliance strengthened. Because "specially designed" is a critical element of numerous Export Control Classification Numbers, this definition is a significant step.

This version of the definition is more understandable than that proposed by BIS in the July 15 Proposed Rule (*Control of Items the President Determines No Longer Warrant Control Under the United States Munitions List*). The addition of specific examples in most sections of the definition is helpful and informative. Language has been included that narrows the scope of the definition to better align with the criticality of the item and to avoid inadvertently capturing commercial products.

Our only comment is with regard to section (b)(3), which reads as follows:

(b) A ''part,'' ''component,'' ''accessory,'' or ''attachment'' that would be controlled by paragraph (a) of this paragraph is not ''specially designed'' if it:

(3) Has the same form, fit, and performance capabilities as a part, component, accessory, or attachment used in or with a commodity that:
(i) Is or was in ''production'' (i.e., not in ''development''); and
(ii) Is either not enumerated on the CCL or USML, or is enumerated in an ECCN controlled only for Anti- Terrorism (AT) reasons;

Boeing is concerned that the term "fit" will inadvertently capture parts, components, accessories, and attachments that undergo minor size changes unrelated to function or performance capabilities. A part with the "same form, fit, and performance capabilities" could be interpreted to mean an identical part. If that is the intended standard, then this exclusion is severely limited.

We do not believe that BIS should, as a policy matter, seek to control minor modified parts, components, accessories and attachments when the change is minimal and required only to accommodate installation or use on a USML or 600 Series-controlled item. Examples include slight modifications to shape, dimension, length, thickness, or accommodations for installation, such as structural openings, location/number of hole drilling sites, etc. Controlling such items would not align with the stated goal of the Export Control Reform initiative of "permitting the U.S. Government to focus its resources on controlling and monitoring the export and re-export of more significant items". Clarification of the intended scope of "fit" would be helpful guidance for exporters and could take the form of policy guidance or a Note to the definition.

Boeing recommends that clarification should be provided that "fit" does not encompass minor changes to size, dimensions, or installation elements that derive from commercial technology and processes, and do not change functionality or performance capabilities.

Thank you again for the opportunity to provide comments. Please do not hesitate to contact me if you have any questions or need additional information. I can be reached at 703-465-3505 or via e-mail at stephanie.a.reuer@boeing,com.

Sincerely,

Stephanie A. Reuer
Director, Global Trade Controls