The Boeing Company
1200 Wilson Blvd
Arlington, VA 22209-1989

February 1, 2012

Hillary Hess
Director, Regulatory Policy Division
Office of Exporter Services
Bureau of Industry and Security
U.S. Department of Commerce, Room 2099B
14th Street and Pennsylvania Avenue NW
Washington, DC 20230

Subject: RIN 0694-XA37,
Notice of Inquiry: Retrospective Regulatory Review Under E.O. 13563

Dear Ms. Hess:

The Boeing Company (Boeing) welcomes the opportunity to respond to the referenced Notice of Inquiry seeking comments on "any unnecessary compliance burden caused by rules that are unduly complex, outmoded, inconsistent, or overlapping" (Federal Register notice Vol. 76, Number 151, of Friday August 5, 2011), together with suggestions to increase the effectiveness of the Export Administration Regulations (EAR), amongst other regulations. This is a worthwhile effort and we look forward to concrete steps by BIS to address the issues identified below.

Our comments herein address license exceptions, recordkeeping requirements, licenses and approval conditions, parties of concern, name changes, and the ease of reading the EAR. Below please find Boeing's detailed comments.

I. License Exceptions

Missile Technology (MT) controls on commercial aviation items.

While understanding the statutory restrictions related to MT controls, Boeing strongly urges an effort to review and update these controls. Of particular concern are controls on common and essential commercial aviation items, such as Inertial Reference Units (IRUs) (ECCN 7A103). IRUs are present in every commercial airplane and since these items are expensive, few airlines hold them in stock. Boeing urges a relaxation of licensing requirements for IRUs, especially to established airline operators and repair facilities. We respectfully recommend that the export of IRUs be eligible for the Country Group B exception (GBS) or the Strategic Trade Authorization exception (STA).

Another area where MT controls are overly burdensome is the case of temporary exports/re-exports of intangible items by US persons for their personal use while on travel or temporarily assigned abroad -- for example, technology, including on hand-carried laptop computers. License Exception TMP does not extend to exports of MT-controlled intangible items. Another example is licensable reference material carried on board flight-test airplanes. Boeing is required to obtain export licenses for flight-test documents leaving the U.S. that are never provided to other parties, but are used only by Boeing staff during test flights outside of the U.S.

Expansion of License Exception RPL

License Exception RPL does not allow for licensable parts to be forward deployed and staged abroad as spares for future re-export to customers to exchange parts under warranty. It also requires one for one exchange between the original exporter and the end user. This presents challenges because the industry trend is for airlines to source parts from distribution centers or Maintenance, Repair, and Overhaul centers (MROs) closer to aviation hubs. As an example, the need for an IRU can cause an airplane to be removed from revenue service, which can have significant financial consequences for the airline. Because of its commitment to customer service, safety of flight, and the need for reliability of aircraft and flight schedules, Boeing seeks to provide an immediate response when customers require replacement parts under warranty.

A recommended solution would be to permit global Boeing distribution centers or well-established and trustworthy MROs to use the RPL exception, rather than the original exporter of the item to be replaced. Items could be exported to these locations under license and when a replacement is needed it would be provided by the distribution center or MRO out of their inventory under RPL in exchange for the damaged one. The damaged part would go to the distribution center/MRO and be destroyed, refurbished and returned to stock for future redeployment, or sent to a repair station. Additional assurances could be provided by considering such centers or MROs for a Validated End User or Trusted Exporter type of authorization.

Increase in Limited Value Shipment (LVS) Values

Boeing recommends that BIS update LVS dollar values and periodically adjust them for inflation.

II. Recordkeeping

Improve BIS document retention

From Boeing experience, there may be opportunities for improvement in BIS tracking and retention of technical control plans, reports, and other license documentation submitted to BIS by exporters and other parties to export transactions. For example, Boeing is

frequently asked by BIS to produce documents previously provided directly to the BIS EARreports web address by the ultimate consignee/end-user in accordance with license conditions. These requests appear unnecessary because BIS already possesses the documents.

Create a mechanism to notify BIS of unused licenses

We understand and support current BIS policy that does not require applicants to return licenses to BIS. On occasion, Boeing is asked for documentation regarding licenses that were never used because of changed business conditions. Boeing suggests that BIS create a mechanism under which exporters may notify BIS of unused licenses. If a simple license close-out notice were instituted it could benefit BIS and exporters.

III. Licenses and Approval Conditions

Boeing offers the following recommendations for reducing the burden and increasing the effectiveness of EAR requirements in the area of licenses and conditions.

License conditions not grounded in EAR

- At times we see approval conditions that impose restrictions that are not present in, or go beyond, applicable regulatory language in the EAR. We understand that approval conditions are a product of interagency input, but believe this tendency should be closely monitored. For example, a license to export ECCN 1E001 technology may have conditions restricting non-licensable (e.g. ECCN 1E994 or EAR99 level) technology such as systems access, requirements documents, or non-licensable material properties.

Review and standardization of license conditions, especially for technology exports

Boeing occasionally receives license approvals that contain unnecessary, unclear, and/or conflicting conditions. Such situations cause business delay and consume resources from both industry and BIS to clarify. These situations could often be prevented with careful and concise drafting. Issues of concern include:

- Wording in one condition that allows the export to proceed, only to be followed by another condition that appears to disallow or limit the transaction. For example an initial condition will allow the export of technology as explained in the license application, but a subsequent condition will state that technology "not already in the public domain" cannot be discussed or released;
- The use of ITAR terminology rather than defined EAR terms, e.g. 'manufacturing know-how', 'technical data';

- Conditions that are inconsistent with precedent and similar work scope licenses;
- Odd or absent punctuation - a misplaced comma or period can change interpretations in many cases;
- Conditions requiring a report, but no clarity on whether a negative report is required when no exports are made against the license.

Consider the need for redundant compliance documents

License approval conditions, as well as the EAR itself, compel parties receiving controlled technical data, hardware, or software to comply with restrictions on re-export or transfer. License conditions are shared with ultimate consignees/end-users, which notify them of these requirements. The further requirement to obtain a Letter of Assurance (LOA), either per Part 748, Supplement 2, for NS-controlled items, or as an approval condition is a redundant and unnecessary compliance burden that we recommend be removed. For example, Boeing has received conditions requiring non-U.S. aviation safety agencies to sign LOAs when the conditions of the license already prohibit re-export.

Simplify the process to obtain an amended license

Occasionally licenses are issued that contain an error, either on the part of the exporter or BIS. In Boeing's experience, obtaining an amended or corrected license from BIS is difficult and time-consuming. Additionally, such amended licenses are only available in hard copy, and do not form part of the SNAP record. Boeing recommends the establishment of fixed time periods to amend licenses, e.g. five business days for exporters to notify BIS of an error and 10 business days for BIS to issue an amended license which is then posted in SNAP.

IV. Parties of Concern

Exporters share the concerns of the U.S. government regarding the diversion of licensable items and Boeing diligently screens for restricted parties. Occasionally, when seeking a license, we face unexpected delays due to concerns about a particular party that are raised in the interagency review process. Exporters would be better served if these individuals or entities were placed on publicly-available restricted party lists. Such transparency would prevent industry from expending resources on pursuing transactions with such parties of concern.

Boeing recognizes the need for certain lists of parties to remain out of the public domain, for reasons of investigation or monitoring. We would request that parties of concern be publicized to the maximum extent possible, in order that industry participate in, and support, U.S. efforts toward technology and transaction denial.

Concerns raised over parties listed on license applications can result in interagency reviews extending six months or more. Boeing requests that BIS pursue a more streamlined and efficient interagency resolution process that does not exceed 30 calendar days.

V. Ultimate Consignee/End User Name Changes

Clarify the appropriate actions to take when exporters become aware of ultimate consignee/end user name changes. Past informal guidance has indicated that name changes are not always material but standardized explicit guidance is needed. Additionally, it is not clear whether exports must stop until a replacement or amended license is issued to reflect a name change. This would present a serious business disruption so it is important to have full published guidance.

VI. Reading the EAR

We appreciate that BIS re-instated its user-friendly version of the EAR on its webpage. Further improvements could be realized by employing indentations to better define the text and paragraphs, and inserting 'hot' links in the online version to related control text.

Boeing has provided comments to the Bureau of Industry and Security in the past on various aspects of the EAR, either through the Technical Advisory Committees or in response to Federal Register notices. We believe these past submissions also contain information related to the objectives of this Inquiry. Comments have covered Foreign Policy-based Export Controls, the Utilization Rate of Export Licenses issued by BIS, the Effect of Export Controls on Decisions to Use or Not Use U.S.-origin Parts and Components in Commercial Products, Improvements to the EAR, and Anti-Terrorism Controls Criteria. We refer you to these submissions in addition to the areas we cover above.

Thank you again for this opportunity to present recommendations for improving the effectiveness and efficiency of the EAR. Please do not hesitate to contact me should you have any questions, or desire additional information. You can reach me by phone at 703-465-3505, or via e-mail at stephanie.a.reuer@boeing.com.

Sincerely,

Stephanie A. Reuer
Director, Global Trade Controls