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To: PublicComments@bis.doc.gov
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Subject: RIN 0694-AF03

Attached please find comments by Boeing on the Strategic Trade Authorization (STA) License Exception.

Best regards,

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Regulatory Policy Division
Bureau of Industry and Security, Room 2705
U.S. Department of Commerce
Washington, D.C. 20230

Subject: RIN 0694-AF03
Export Control Modernization: Strategic Trade Authorization License Exception.

Thank you for the opportunity to provide comments on the above referenced Proposed Rule ("Rule"). Industry participation and input is critical to achieving the goals of the Administration's Export Reform Initiative and Boeing fully supports these reform efforts.

The proposed Strategic Trade Authorization ("STA") is a sensible approach towards aligning export risk with regulatory burden. STA permits eligible low-export-risk items to be shipped to allies and friendly countries under a process that provides regulator insight to the transaction and explicitly notifies end-users of their obligations regarding re-export and in-country transfers. In addition to the STA exception, as the Bureau of Industry and Security ("BIS") develops licensing policies for items in the proposed Tiers 2 and 3, Boeing encourages you to consider additional flexible authorization mechanisms such as validated end user, intra-company and program licensing, and use of an "open license" similar to that used in the United Kingdom.

Boeing envisions potential application of the STA exception to ECCN 9A004 exports which could be meaningful given the ongoing commercialization of space transport activities. Despite initial limited applicability to our own company, Boeing understands that the exception will be an important benefit to other industries and could reduce overall licensing burden by 3,000 licenses. Boeing applauds this effort by BIS to improve the export licensing environment for low risk items.

We do have two suggested improvements to the STA as proposed, including:

(1) Accepting a single destination control statement rather than requiring both the STA statement and the statement pursuant to EAR Part 758.6, and

(2) Allowing consignees to accept STA conditions for the duration of a program or contract rather than on a per shipment basis.

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The Federal Register Notice also requested input on several ECCNs that are under consideration for placement in Tier One and which would not, therefore, be eligible for this new license exception. Of those listed, ECCNs 9A004 and 1A002 impact Boeing. Specifically:

ECCN 1A002 relates to semi-finished articles made from specific ECCN 1C010-listed materials, or materials having carbon or inorganic fibers and carbon or metal matrices. Many different commercial products involve semi-finished articles classified under 1A002; applications and global availability of these items vary significantly depending on the material. ECCN 1A002 items are essentially intermediate-stage items that have not reached completion of all fabrication steps and engineering acceptance. This includes in-process parts before being accepted by manufacturer's quality system, for example parts undergoing lay-up, trim/drill, or non-destructive inspection.

We understand that Tier 1 items are intended to be limited to weapons of mass destruction, their delivery systems, and facilities that are exclusively available from the U.S. and provide critical military or intelligence advantage. From Boeing's perspective, we do not believe any of the semi-finished commercial articles specified in 1A002 could have military criticality comparable to a weapon of mass destruction. Furthermore, licensing requirements for many 1C010.e-controlled commodities apply to only those countries subject to National Security (NS) column 2 controls. Therefore, it is presumed that numerous regime members currently have the capability to design and manufacture 1A002 structures or laminates.

For the reasons above, Boeing recommends that ECCNN 1A002 items be placed below Tier 1 consistent with USG-provided criteria for availability and military criticality. If the U.S. government knows of a subset of 1A002-listed items that make a critical contribution to Tier 1 capability, then 1A002 could be subdivided and the listed items placed in the appropriate tier. We recommend that the raw materials controls be placed in the same Tier as the 1A002 structure or laminate made from that material because structures and laminate availability is largely dependent on the availability of the raw materials from which they are made. Finally, associated technology controls imposed by 1E001 should be applied at the same tier as 1A002 because companies that can access the materials can also generate the development and production technologies for the structures and laminates.

ECCN 9A004 is a catch-all covering the International Space Station ("ISS"), specific ISS hardware, and certain related data. Although the 9A004 items that Boeing exports are unique to the ISS, the other ISS partners (Canada, Japan, the European Union, and Russia), have the technical capability to develop the same items. At present, many such exports are covered by the GOV license exception. However, commercial items such as fasteners, hatches, and berthing mechanisms currently require licenses, which would be eligible for shipment under the STA exception, once the final rule is effective.

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As in the case of 1A002 items, Boeing does not perceive that these low-level 9A004 items represent a military or intelligence threat. However, if there are such military critical 9A004 items, a practical approach would be to subdivided the ECCN category and place the listed items in the appropriate tiers.

Generally speaking, tiering placement that would require licensing to regime member states for 1A002 structures and laminates or 9A004 items would not improve national security as the items are available outside the United States. It could instead, result in an increased regulatory burden and a competitive disadvantage to U.S. companies due to more rigorous licensing practices in the United States.

Once again, thank you for offering industry the opportunity to comment. Boeing looks forward to continued engagement with BIS on reform initiatives and moving to the implementation phase.

Sincerely,

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