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January 18, 2012

Gene Christiansen
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: Proposed Rule RIN 0694-AF41
Revisions to the Export Administration Regulations (EAR): Control of Gas Turbine Engines and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML), dated December 6, 2011

Dear Mr. Christiansen:

The Boeing Company (Boeing) welcomes the opportunity to comment on the referenced Proposed Rule (PR). The initiative to move to a clearer and more positive United States Munitions List (USML) coupled with the movement of less significant items to the Commerce Control List (CCL), while difficult, is worthwhile. Boeing remains committed to working with the regulatory agencies on export control reform in order to achieve a modern and effective export control system.

While Boeing does not manufacture aircraft engines, they are critical to our products. Aircraft design and certification are closely linked to aircraft engine capability, which is in turn dependent on aircraft requirements.

In our role as an aircraft manufacturer, Boeing produces and provides complete aircraft, which contain installed engines consisting of some of the parts that may be interpreted to be covered under this PR. We work closely with engine manufacturers in areas such as engine and nacelle integration onto our airframes. Commercial items that Boeing designs and installs, including thrust reversers and engine exhaust nozzles, could be subject to USML jurisdiction under this proposed rule.

Boeing believes that the proposed USML Category XIX carries significant risk of capturing past, present, and future commercial aircraft engines on the USML,

which would have serious negative consequences on the U.S. commercial aviation industry. However, this problem may be mitigated in the proposed ECCN9X619 by careful use of "specially designed" and "required".

We strongly recommend the establishment of a forum for sharing proprietary information to enable regulators to gain a deeper understanding of commercial engine and aircraft capabilities.

I. Engines in Category XIX/9X619

It is important that those system features that are developed by the aircraft manufacturer to install an engine on an aircraft are not confused with those system features of the engine that are fundamental to independent engine operation. For example, Boeing designs and provides several ".y" items, including fuel lines and hoses that connect the airplane fuel system to the engine. Boeing also designs and provides oil lines and hoses which provide cooling to the aircraft electrical power generating appliance that is installed on the engine. Boeing considers these features and functions to be aircraft items and not engine items. It is of significant concern to Boeing that, as this Proposed Rule separates aircraft engines from Category VIII to create a new USML Category for military gas turbine engines, there is a critical lack of clarity in the Proposed Rule regarding where the engine ends and where the airframe begins.

II. Supplement 4

Boeing continues to be concerned with the Supplement 4 concept which appears to be featured in all the new proposed categories. This supplement lists 600 series commodities for which related software/technology cannot be sent under an exception to our closest allies and multilateral export control regime members. We believe this supplement adds unnecessary complexity and will result in exporters seeking licenses, despite potential license exception STA eligibility, in order to avoid this complexity - thereby undercutting the supposed advantages of STA. Supplement 4 is a step back from establishing a "bright line" distinction between the USML and the CCL.

In the proposed military gas turbine engine Category, the proposed Supplement 4 adds even more complexity by creating two restricted lists: one list of parts/components for which "build-to-print" software and technology can be exported under the STA and GOV exceptions, and a separate list for part/components for which technology or software requires a license.

As stated previously, we believe Supplement 4 should be eliminated or significantly scaled back. If there are items that require such treatment, the criteria for listing in the Supplement should be clear, the list should include only those few "specially designed" items which have unique military functionality and no commercial equivalent, and the list should be justified by foreign availability studies.

III. Definitions

As stated above, Boeing appreciates the consistent use of the terms "specially designed" and "required" in this PR to distinguish items having uniquely military functionality from commercial counterparts. Below, we provide additional comments on specific terms and/or definitions from the PR.

"Military Gas Turbine Engines"

We note the definition of 600 Series engines provided in the Note to 9A619.a:

For purposes of ECCN 9A619.a, the term ``military gas turbine engines'' means gas turbine engines ``specially designed'' for ``end items'' enumerated in USML Category VI, VII, or VIII or on the CCL under ECCN 9A610, ECCN 0A606, or the 600-series ECCN that would control vessels transferred from the USML to Category 8 of the CCL by a proposed rule that BIS plans to publish.

This definition should be used in both the CCL and the USML and should be included in Part 772 of the EAR.

"Specially Designed"

Again, the definition of "specially designed" has significant implications. Boeing has proposed a definition of "specially designed" in previous review comments. To the extent our current comments are negated or require change as a result of a future definition, Boeing will update our comments as appropriate. We reiterate our strong belief that the ultimate definition must include a nexus to the controlled functionality of the item (including parts, components, accessories, and attachments) and should avoid capturing changes to mere form or fit.

Hot Section

The paragraph on *hot section* in ECCN 9A619(c) seems to represent a significant expansion of controls from the definition in current USML Category VIII(b) (which was revised in 2008). If the 2008 definition is adopted for this rule, Boeing requests that the language be clarified to indicate that the listed hot section components are the only hot section components controlled. It is not clear in either the current 2008 definition, or this Proposed Rule definition, what is defined as *hot section*, and what constitutes a "related" item. The ultimate definition should be placed in the definitions section of the regulations and apply to both the USML and CML.

IV. The ".y" Category

BIS has described the items listed in the .y subcategory as having "little or no military significance", thus warranting less strict controls. Boeing sees no obvious national security benefit to asserting independent control of such items within the 600 series. Items controlled at this proposed level (AT control) can be found throughout the CCL in xx991 and xx994 ECCNs. All items controlled for AT reasons should be located at these ECCN levels, rather than creating an entirely new category, at an identical level of control, in a new Category 9 600 series.

To avoid a situation where exporters, for example, must control 737 fuel hoses under one compliance program and marking scheme (CCL), and P-8 fuel hoses whose fit has been slightly modified under a different compliance program and marking scheme (CML), Boeing urges BIS to consider creating a separate list in 9A991 (e.g. 9A991.z) for these items. Given the potentially long list of insignificant parts and components, the development of categories rather than individual parts listings should be considered.

As stated previously, a transparent process is needed for exporters to nominate items to be added to the ".y" or "9A991.z" category. This could take the form of a CCATS-type process that would include subsequent publication of added items on a periodic basis so that all exporters could operate consistently, as was proposed for ".x" parts and components.

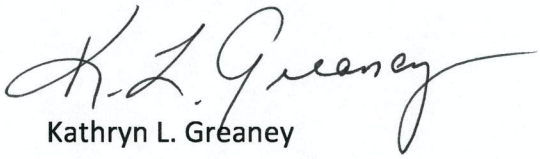
V. <u>9X619 text</u>

BIS has carried over the proposed USML language in the "related controls" section of 9D619 and 9E619. We recommend that "directly related to" be replaced with *""required" to achieve the military functionality of the*" articles enumerated in the relevant USML Category.

In terms of overall reform transition, Boeing reiterates our view that a phased implementation of the ultimate final rules implementing these regulatory changes is needed. This type of approach will provide exporters the ability to adequately implement the required trainings, the necessary re-marking, and overall systems changes to their processes and procedures and to ensure compliance. We support an interim rule, a pilot program that engages industry and the regulatory authorities, and a transition period involving a phased implementation over the course of a calendar year.

We appreciate the substantial effort that this proposed rule and the Export Control Reform Initiative represents. Boeing believes this is important work that will enhance national security and rationalize the existing outdated export control system. Please do not hesitate to contact Stephanie Reuer in our Rosslyn, Virginia office should you have any questions or desire additional information. You can reach Stephanie by phone at 703-465-3505, or via e-mail at stephanie.a.reuer@boeing.com.

Very truly yours,



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