BAE Systems, Inc.
1300 North 17th Street, Suite
1400
Arlington, VA 22209

September 13, 2011

***Sent via e-mail to publiccomments@bis.doc.gov and submitted through the federal rulemaking portal (http://www.regulations.gov)***

Timothy Mooney
Regulatory Policy Division, Bureau of Industry and Security
U.S. Department of Commerce

**Regulations.gov rule ID:** BIS–2011–0015

**Re:** Federal Register / Vol. 76, No. 136 - Proposed Revisions to the Export Administration Regulations (EAR): Control of Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML)

Dear Mr. Mooney:

BAE Systems, Inc. would like to thank the Department of Commerce (DOC), Bureau of Industry and Security (BIS) for the opportunity to comment on the proposed rule reflecting the movement of items the President determines no longer warrant control under the USML to the Commerce Control List (CCL). BAE Systems fully supports the objectives of the DOC and Department of State (DOS) in the Export Control Reform initiative.

After reviewing the proposed rule in the Federal Register Notice, we provide the following comments to the BIS.

**(1) 600 Series**

**Proposed de minimis level**
The proposed de minimis level of 10% for the "600 series" parts and components incorporated into foreign end items increases the opportunity for error in the calculations by foreign manufacturers. This is based primarily on the complexity of how one determines the de minimis level. Furthermore, we do not understand the logic of limiting it to 10% for all destinations. We believe that the 25% limit for closer allies would be entirely appropriate and defensible; the STA 36 country group could be a logical starting place.

Additionally, it is unclear how the proposed 10% level would apply to end items incorporating both 600 series components and other Commerce controlled parts. We understand the rule to mean that the 10% de minimus threshold for U.S. content only applies to the 600 series items, and that any 600 series content would count against the 25% de minimus limit for all other Commerce controlled items embedded within the end item. We would welcome a clarification in the regulation regarding this matter.

**USML de minimis Level**
We recognize that the DOS is of the view that they must exercise control over USML items, regardless of the item's military capability. We would like to make a recommendation that an exemption be approved that would apply a similar de minimus level covering USML parts and components incorporated into a foreign end item. The exemption could be subject to a determination that it would apply only if the incorporation of the USML items doesn't enhance the military capability of the end item. By introducing this new de minimus level exemption for USML components, we believe the DOS could deter foreign customer's "ITAR free" trend of designing out USML content, but still retain control over the relevant ITAR items.

**(2) Creation of ECCN 0Y521 as an Equivalent to USML Category XXI**

The creation of the ECCN 0Y521 is a positive step as it comes with the guarantee of a future commodity classification determination for items controlled by this category. However, the creation of 0Y521 raises concerns that the ECCN may be overused and a maximum of three years for which any item can be held in this category seems inconsistent with the rate at which new technology is developed. We encourage BIS to adopt a shorter time limit (e.g., 2 years) for holding items in this category as well and are of the view that BIS should state in the final rule that 0Y521 will only be used in exceptional circumstances. By placing such a limitation on 0Y521 use, it increases the likelihood that the ECCN will not be overused for difficult classification requests and increase the willingness for industry to submit them. We further urge BIS to contact exporters directly before designating an item as 0Y521 to ensure accurate descriptions are made and to discuss alternatives.

**(3) Changes to EAR Definitions to Address the Movement of Items from the USML to the CCL, Including Adopting a Single Definition of "Specially Designed"**

**Definition of "End Item"**
There is a potential ambiguity in the phrase 'ready for its stand-alone use' in the sense that an item can be ready for its stand-alone use, while still being intended for incorporation into a foreign end item. A safety beacon for an aircraft dinghy might be an example. We suggest the addition of a note on the lines: 'an item otherwise satisfying the definition of an "end item", if intended for incorporation into a foreign end item, is to be treated as a "component."

**(4) Other Changes to Assist in the Structural Alignment of the USML and the CCL**

**Jurisdictional issues created by the movement of items from the USML to CCL**
After items have been moved from the USML to the CCL, in the event an exporter incorrectly submits a license application to the DOS we recommend a RWA be generated from the DOS and a BIS license for the CCL controlled goods be issued simultaneously if the single license application form is already in place. If this is too complex and deemed impossible, we encourage guidance, training and outreach in order to educate industry on the correct measures to take in this scenario. The 600 Series Handbook approach laid out below would be one possible method.

**600 Series Handbook**
As the incorporation of this new rule into the CCL is inevitably complex, and many defense companies will be forced to navigate the unfamiliar structure of the EAR for the first time, we think it would be helpful for exporters and importers of '600 series' items, for BIS to create a special handbook covering those elements of the EAR applicable to the treatment of such items. We believe that should the DDTC decide to issue RWA's for USML items that have been moved over to the 600 series in the CCL, applicants could be directed towards the aforementioned handbook in order to guide them in what could very well be their first experience with the Commerce Regulations.

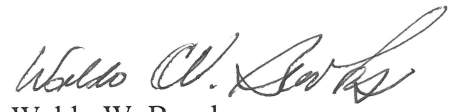
**Existing DOS Authorizations**
Should this proposed rule be published as final and the appropriate notifications to Congress made for the items being transferred to the CCL from the USML, we request a period during which existing DOS authorizations would remain valid, preferably until the license expires. Even though the item or technology would have been transferred to the Commerce Department, no additional regulatory jurisdiction for the authorization from the Commerce Department would be required for any DOS licensed articles. This would avoid shipment delays by U.S. exporters and potential disruptions to the foreign customers.

**U.S. Government eligibility for STA exception**
We recommend clarifying whether the STA exception can be used for 600 series CCL items being exported directly to a U.S. Government end user located in any country group.

**BIS License Reviews**
We are extremely grateful that the DOS has expedited timeframes for reviewing licenses for defense articles that support operations in Iraq and Afghanistan. We strongly encourage BIS to adopt the same procedures for 600 series items. In addition, BAE Systems would recommend that a "Do Not Staff" list be created for minor items as DOC deems appropriate.

On behalf of BAE Systems, I would like to thank the BIS for the opportunity to offer comments in response to this Federal Register Notice and hope that the input provided is useful in advancing the Administration's export control reform initiative. Should you have any questions about our submission, or if we can be of assistance to your efforts in any way, please contact me at 703-907-8241 or chip.brooks@baesystems.com.

Sincerely,



Waldo W. Brooks
Associate General Counsel, Export Control
BAE Systems, Inc.