AEROSPACE INDUSTRIES ASSOCIATION

September 13, 2011

Regulatory Policy Division
Bureau of Industry and Security, Room 2099B
U.S. Department of Commerce
14th and Pennsylvania Avenue, N.W.
Washington, D.C. 20230

ATTN: Timothy Mooney

RE: RIN 0694-AF17 USML to CCL Transfer Methodology

Dear Mr. Mooney:

The Aerospace Industries Association (AIA) wishes to express our support for the reform of the existing U.S. export control system to enhance the national security of the United States, while providing clarity, predictability and transparency for the exporting community and foreign customers.

With regard to the specific provisions in the above referenced proposed rule, we found it difficult to complete a full analysis of the impact of this proposed rule without having additional proposed revisions to the United States Munitions List available, and a more thorough understanding of which items would move to 600-series ECCNs.

However, we wish to make the following comments based on our initial review of the proposed rule:

1. We have a concern about avoiding an increase in the licensing burden to manage a program to deliver equipment, technical data/technology, and services to foreign customers. As an example, a marketing license would be required for the USML controlled system, a TAA for the technical data and defense services, a USML hardware license and a Commerce license for the technology and hardware under Commerce jurisdiction. If the number of licenses increases in this fashion, it will worsen the growing backlog in the interagency review process, as well as increasing the complexity and administrative burden for exporters (particularly small and medium size businesses). To address this potential problem, we recommend the following:
    a. "Grandfathering" existing DTC approved licenses for parts and components versus requiring a second license from Commerce in the middle of a contract delivery period with potential disruptions to the foreign customer.
    b. Implementing this proposed rule as an interim final rule until the proposed "single license application form" is in place. We are hopeful that the one form will be designed so that it can be used to apply for multiple authorizations.

2. To clarify jurisdiction issues for items (USML vs CCL), DDTC should contact registered companies and advise them in advance on the new/appropriate list of their previously exported products. DDTC and BIS should coordinate when a company incorrectly files for a license under the wrong control list. Ideally the company would get an RWA from State and a CCL license (assuming approval) at the same time. State could also provide an automatic Commodity Jurisdiction when a license is RWA. At the very least State should provide guidance/next steps for companies receiving RWA licenses. Small/medium businesses are also concerned about liabilities/penalties from Customs and Border Protection and the Census Bureau should they file the wrong ECCN number. Guidance, training, and resources are particularly needed for small and medium size companies who may have been exporting solely under the USML and now need to learn CCL procedures.

3. Industry is concerned about the use of provisos for items transitioning over to the CCL. CCL items should not be "proviso'd" to the point that they effectively retain USML level control.

4. There should be a single license exception for all shipments of USML and CCL products from the U.S. directly to U.S. government facilities or users overseas (whether to military bases or embassies or whatever). This would greatly reduce the number of licenses that have to be processed by both State and Commerce without compromising national security interests.

5. We believe that the proliferation of the "ITAR free" movement by our foreign competitors could be addressed by proposing a "de minimis" standard in the ITAR for USML parts and components incorporated into a foreign end item that do not enhance the military capability of the end item.

6. Review of the proposed rule's definition of "specially designed" by our engineering community resulted in feedback that the proposed definition is not a technical, objective, quantifiable standard for identification of items that meet specific criteria. While we appreciate the effort to further define the terminology, we believe the definition should identify specific objective and quantifiable criteria, or omit use of the term completely and rely strictly on the technical parameters to define controls. It would be extremely confusing for practitioners, despite the best efforts to explain in the regulations, why U.S. Government agencies use the term "specially designed" in this rule but "specifically designed" under the ITAR. If the term, "specially designed," is to be included in the final rule it should be used to help identify what is NOT captured as opposed to what is captured.

7. We believe the Commerce Department should clarify in publication of the final rule that license exception STA may be used for CCL items in the 600 series to be exported directly to a U.S. Government installation in any country group.

8. The proposed de minimis level of 10% for the "600 series" parts and components incorporated into foreign end items increases the complexity and opportunity for error in the calculations by the foreign manufacturer. For example, if a foreign end item incorporates 600 series parts that are 8% of the value of the end item, and other Commerce controlled parts that are 8% of the value of the end item, is the foreign end item not controlled for re-export because it is less than the de minimis level for both of the two categories, or is it controlled for re-export because the total U.S. controlled content exceeds the 10% for the 600 series parts? We assume the proposed rule intends the de minimis exception to apply when both categories are below 10%, but the de minimis concept is already hard enough for foreign manufacturers to understand. Further complexity to de minimis standards are likely to motivate foreign competitors to design out U.S. origin items. It would be preferable to retain the existing de minimis standards for the "600 series."

9. BIS should clearly state that the 0Y521 ECCNs will be used only in exceptional circumstances. BIS should note that many new and emerging technologies do not easily fit within the existing confines of the control lists. A timely process for resolution between industry and regulators for new/emerging technologies should be adopted so that developing industries can market their products and not have their technologies in limbo. We encourage BIS to contact exporters prior to adding any item to the 0Y521 to discuss credible alternatives. Industry generally has more accurate information regarding particular technologies, and there is great risk that a 0Y521 item will be described inaccurately or in a way that grabs items that are not of concern to the USG absent consultation with the company/university that possesses the technology in question. There also needs to be an enforced time limit regarding how long an item is allowed to stay in the 0Y521 ECCN.

10. We urge the Commerce Department to provide clarification within the final rule, or via website guidance, regarding the circumstances and timeline for a company to submit a CCATS to adjust treatment on the CCL for a 600 series item from an RS1 to AT or EAR99 control. We believe this process would be aligned with the Administration's efforts to control products and technologies while considering the relative capability and life cycle of the product/technology. It is industry's position that items already on the CCL in an existing ECCN should not be moved to the 600 series ECCN.

11. Please confirm that there are no Automated Export System (AES) reporting requirements for 600 series items valued at less than $2500 that can be shipped under STA.

12. The proposed rule requires STA exception requests be submitted with an application for the export of the requested item. STA exception requests should be allowed independent of a particular application. Additionally STA exception requests should be possible for the entire ECCN versus a specific item under that ECCN.

13. Industry seeks clarity on the burden of proof faced by US manufacturers to ensure the ultimate end user is a government within the STA-36 counties? This issue is particularly challenging when the US manufacturer is a subtier supplier of parts and components. As currently worded the STA exception would require traceability by all parties in the supply chain for a potentially unserialized part or component (i.e., screws, nuts, bolts, brackets, etc.) to ensure ultimately it ended up with a government within the STA-36 countries.

14. Part 740.10(a)(2)(ii) states that RPL is not eligible if "[t]he conditions of the original U.S. authorization…have been violated." What if the violation was voluntarily disclosed with the controlling agency and the matter resolved?

15. Within the current proposed rule, Part 740.2, license exception RPL may not be used for 600 Series items controlled for MT reasons. However, these same items are eligible under the ITAR for license exemption 123.4(a). We would request that the Commerce license exceptions applicable to the 600 series be consistent and achieve parity with treatment of that same item as currently controlled on the USML.

16. Part 772.1 definition of "600 series" states that it "controls items on the CCL that were previously controlled on the United States Munitions List…" That could be read or interpreted that items moved from the USML to CCL via a CJ and are now in a ECCN other than the "600 series" will now be placed within the "600 series". Industry requests BIS clarification.

17. The proposed rule lists types of government agencies (armed forces, police, paramilitary, law enforcement, customs and border protection, correctional, fire, and search and rescue agencies) that would be eligible to ultimately receive items through the STA exception. AIA recommends BIS adopt a more general descriptor: ""international organizations and foreign government agencies acting in an official capacity." This general descriptor utilizes terms used elsewhere in the ITAR and EAR.

18. Lastly, should this proposed rule be published as interim final, we believe adequate resources, training, oversight, and communication with industry – particularly small/medium size businesses – will be critical for Commerce to successfully manage an increase in licenses and ensure the system does not slow/break down. A consolidated interagency focus group should be established to train U.S. government personnel at DTC, BIS and DTSA about the rule, the new licensing and license exceptions, followed by outreach seminars to engage a wide spectrum of U.S. exporters. We would also support user guides and website FAQ's with scenarios, similar to the BIS website for the Anti-Boycott Regulations. In addition, given the increase in Department of Commerce licensing volume, we support adequate resources in personnel and system enhancements to ensure processing timelines and visibility by industry into U.S. Government staffing points are in alignment with the prior NSPD-55 and 56 guidance. DDTC has expedited their licensing times for items supporting operations in Iraq and Afghanistan and we hope BIS will be able to do the same. Finally we encourage the adoption of a 600 series "Do Not Staff" list between Commerce and Defense for review of less significant technologies if/when appropriate.

If you have any questions or need clarification, please contact me at 703-358-1072 or remy.nathan@aia-aerospace.org.

We thank the Department for providing the opportunity for U.S. exporters to review and comment on the proposed regulatory change.

Sincerely,

Remy Nathan
Vice President, International Affairs
Aerospace Industries Association