AEROSPACE INDUSTRIES ASSOCIATION

December 21, 2011

Department of Commerce
Bureau of Industry and Security
Regulatory Policy Division
Room 2099 B
14th Street and Pennsylvania Avenue, NW
Washington, D.C. 20230
ATTN: Gene Christiansen, Office of National Security and Information Technology Controls

Re: Notice of Proposed Rulemaking, RIN 0694-AF36, 76 Fed. Reg. 68675 (Nov. 7, 2011); Amendments to 15 C.F.R. Parts 738, 740, 742, 770, 772, and 774

Dear Mr. Christiansen:

The Aerospace Industries Association (AIA) and our member companies appreciate the opportunity to comment on the Department of Commerce's proposed amendments to the Export Administration Regulations (EAR). Revising Category VIII (aircraft and related articles) of the U.S. Munitions List (USML) to describe more precisely which military aircraft and related defense articles warrant control on the USML will create a "positive" list which will result in a more predictable, efficient, and transparent export control system. Additionally, creating new classifications on the Commerce Control List (CCL) will ensure proper oversight is established for items moving from the USML to the CCL. AIA has long been a champion of sensible export control reform and we are encouraged the Administration shares this priority.

It should be noted that Category VIII is closely related to Categories XI (military and space electronics), XII (fire control, range finder, optical and guidance and control equipment), and XIX (gas turbine engines). In this regard, AIA and its members may amend our attached comments once we have an opportunity to see the draft revisions to these other categories. AIA and our member companies thank the Administration for their tireless efforts oto implement export control reform.

Below please find AIA's comments and suggested revisions of the proposed EAR amendments:

Harmonize Key Definitions Between ITAR and EAR

State and Commerce departments should coordinate to assure that these terms and other key terms necessary for proper regulatory interpretation should be the same in both sets of regulations. Currently the Commerce Department proposed rule includes a definition of "build-to-print" that is different than the existing definition of "build-to-print" in the ITAR §124.13 and 126.5(x)(6)(i). Inconsistent definitions between the two export control regulations pose a compliance risk.

Build-to-Print is information that allows the end user to maintain/repair a commodity. The end user will on occasion need to consult with the supplier of said information during the maintenance/repair process for clarification and interpretation. Below is a proposed revision:

> Section 772.1 - "Build-to-Print Technology" is "production" "technology" that is sufficient for an inherently capable end user to produce or repair a commodity from engineering drawings, specifications, standards, planning, computer models, quality acceptance, test and inspection criteria. Supplemental information regarding the following is not within the scope of "build-to-print technology:"
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> (i) "development" "technology," such as design methodology, engineering analysis, detailed manufacturing or process know-how;
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> (ii) ~~the production engineering or process improvement aspect of the "technology;"~~ or
>
> (iii) assistance from the provider of the technology to produce or repair the commodity. Engineering requirements, process specifications, quality assurance acceptance, test & inspection criteria and similar information pertaining to the commodity at issue and assisting a proficient supplier to refine its existing production process to address the peculiarities of a specific part to meet quality standards is included within the scope of "build-to-print" technology" only if it is the minimum necessary to verify that the commodity is acceptable.

Imposition of Higher Level of Control than Current Regulations

AIA is concerned items currently classified as EAR99 as a result of a State Department commodity jurisdiction ("CJ") determination could become controlled by the proposed Export Control Classification Number ("ECCN") 9A610.y.99,[1] because the item is not elsewhere specified on the CCL. Exporters would be required to obtain EAR export licenses that are not currently required for EAR99 items. We recommend that the Department explain whether previously issued CJ and CCATS determinations that determined an item was EAR99 will remain valid.

Furthermore, there are some concerns with respect to the difference between the exemptions in the ITAR and the exceptions in the EAR. Hence it is recommended that BIS consider the creation of License Exception authorizing the use of ITAR exemptions (e.g.,

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[1] RIN 0694-AF36, ECCN 9A610 Military aircraft and related commodities, -y.99. "Commodities that would otherwise be controlled elsewhere in this entry but that (i) have been determined to be subject to the EAR in a commodity jurisdiction determination issued by the U.S. Department of State and (ii) are not otherwise identified elsewhere on the CCL."

126.6(c)) to authorize the export of 600-series CCL parts and components of ITAR defense articles (i.e., end-items and systems). This approach would maintain the status quo and preserve the flexibility currently available to industry and would avoid the imposition of unnecessary licensing requirements that would burden the U.S. Government and industry.

The proposed ECCN 9B610 regarding test, inspection, and production equipment could be perceived as adding new export controls in the EAR with respect to the ITAR. This concern could be addressed with a modification to the 9B610 control statement, by limiting it to the embedded technical data (e.g., software) and eliminating the reference to the USML, thus maintaining the status quo. For example, the header could be revised to read: "9B610 Test, Inspection, and production "equipment" "specially designed" for the "development" or "production" of commodities enumerated in ECCN 9A610 and having embedded technology that is exclusively or predominately used in the "development" and "production" of the enumerated end item."

Clarify Controls applicable to Commercial Unmanned Aerial Vehicles

We believe that any unmanned aerial vehicle ("UAV") specially designed for a military application which is not in MTCR Category 1, and does not include any specially designed capability covered by the USML, should be transferred to the proposed Commerce Munitions List ("CML") ECCN 9A610.a, or existing ECCN 9A012. The proposed rule did not specifically address whether ECCN 9A012 would be eliminated in the same manner as 9A018. We recommend including specific language in the final rule including those unmanned aerial vehicles covered on the CCL in Category 9A012 or added to the proposed 9A610.

With rapid and continuous advancement in UAV technology we would support the formation of a working group between the Departments of State/Commerce and industry so that UAV/UAS technology can be continuously evaluated for appropriate control.

Adopt A Common Standard for Re-Exports of U.S. Parts in Foreign Products

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. Further complexity in the de minimis standards may not address the "design out" of U.S. origin export controlled items by foreign manufacturers. We recommend adopting a standard calculation of 25% for all destinations except proscribed countries identified in the International Traffic in Arms Regulations, §126.1.

Infrastructure and Resource Issues

We want to reiterate the following comments submitted in our September 13, 2011 letter regarding the process for transition of items from the USML to the CCL, and administrative burden.

1. Establish a "grandfather" process and time period to retain validity of existing Dept. of State authorizations for items moving to the Commerce Control List "600 Series".

2. Assure the Department has sufficient resources to conduct training and outreach, as well as process the increased workload that will transition from the State Department.

Additional AIA Comments:

ECCN 9A610.y – A suggestion for improvement – the ".y" list for each former USML category has substantial crossover. Tanks and aircraft both use hydraulic hoses, switches, and windshield wipers. We recommend consolidation of all ".y" items across all categories in a new Supplement to EAR Part 742. This would avoid multiple duplicative lists of simple items, and instead give us one list that is easier to manage. Ideally, this would be with a clarification that these simple items have been determined to be excluded from the "specially designed" criterion and are controlled on the CCL by their attributes rather than under the 600-series ECCNs. There is no reason to control these items beyond "AT". Keeping them on the 600-series makes management of these items far too complicated.

AIA has long been a champion for sensible export control reform and we commend the Administration for their tireless efforts to achieve meaningful reform. Please know that AIA is a willing and committed partner to reform efforts going forward. Additional member company comments can be found on the next page.

Best regards,

Remy Nathan

Remy Nathan
Vice President, International Affairs
Aerospace Industries Association

Additional AIA member company comments:

1. A zero de minimis would be counter to the stated goal of "taller fences around fewer things." It would simply be "taller fences." License exception STA will not be available for most European programs. Exporters will now need to file DOC license applications in place of DOS, while subject to an agency that is far more punitive in regard to disclosures, and struggling with the subjective "specially designed". By dramatically increasing complexity and risk for European companies, this could invite European manufacturers to adopt EAR-free policies in addition to their current ITAR-free policies. This would cede component manufacture to non-US companies, further hamper joint programs, harm US exports, and do little to control European exports. US enforcement would remain distracted by countless trivial items rather than focusing on the critical few. Perhaps it would be better for the US to work with allied Governments in how they control exports, rather than expect foreign companies to work under the export control regulatory burdens of two governments at once.