December 22, 2011

Regulatory Policy Division
Bureau of Industry and Security
Department of Commerce
Room 2099B
14th Street and Pennsylvania Avenue, NW
Washington, DC 20230

VIA ELECTRONIC SUBMISSION ON WWW.REGULATIONS.GOV

RE: RIN 0694-AF36; Comments on the Proposed Rule: Revisions to the Export Administration Regulations (EAR): Control of Aircraft and Related Items the President Determines No Longer Warrant Control Under the USML.

Dear BIS Regulatory Policy Division:

These comments are submitted on behalf of the Industrial Fasteners Institute (IFI), the trade association that represents 85% of the North American production capacity for mechanical fasteners – the nuts, bolts, screws, and rivets that hold together everything we use in everyday life. These fasteners are particularly critical for assembling aircraft, both military and civilian, and therefore, the application of export controls is of particular importance to fastener manufacturers. Most fastener manufacturers are small to medium-sized businesses, and the U.S. fastener industry employs approximately 42,000 employees.

IFI applauds the Administration's overall efforts to amend the Export Administration Regulations (EAR) in conjunction with amendments to the International Traffic in Arms Regulations (ITAR) 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 by the USML and which articles are subject to the Export Administration Regulations (EAR) administered by the Department of Commerce. We are also submitting similar comments to the Department of State's Directorate of Defense Trade Controls (DDTC) Response Team in response to their Proposed Rule: *Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Category VIII.*

In 2008, a clarifying note was added to 22 CFR Part 121 to explain that Section 17c of the Export Administration Act applied to "dual use" fasteners that meet the following definition:

> *"any part or component that (a) is standard equipment; (b) is covered by a civil aircraft type certificate (including amended type certificates and supplemental type certificates) issued by the Federal Aviation Administration for civil, non-military aircraft (this expressly excludes military aircraft certified as restricted and any type certification of Military Commercial Derivative Aircraft, defined by FAA Order 8110.101 effective date September 7, 2007 as "civil aircraft procured or acquired by the military"); and (c) is an integral part of such civil aircraft, is subject to the jurisdiction of the Export Administrative Regulations (EAR)." [emphasis added]*

That language, which has served the U.S. fastener industry well, would be removed from the ITAR regulations by the State Department's proposed rule because it would no longer be necessary. If our understanding of the

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proposed rules and our discussions with Administration officials are accurate, then upon finalization of both proposed rules (State and Commerce), **ONLY** those fasteners (nuts, bolts, screws, rivets, etc.) that are "specially designed" for a specific list of U.S.-origin aircraft that have low observable features or characteristics (B-1B, B-2, F-15SE, F/A18E/F/G, F-22, F-35 and variants thereof, F-117, or United States Government technology demonstrators) will be subject to continued control on the USML. All other fasteners "specially designed" for a military aircraft would be subject to the jurisdiction of the Department of Commerce's Commerce Control List (CCL), under ECCN 9A610.x or 9A610.y, as appropriate.

With regard to the proposed definition of "specially designed": It is our understanding that both the State Department and the Commerce Department are in the process of finalizing a common definition of "specially designed" based on the Commerce Department's July 15, 2011 proposed rule. That definition included the following text:

> *"(d) items that are not so separately 'enumerated' for purposes of this definition, are also not considered ''specially designed'' in any category of the CCL if they are: (1) A single, unassembled part used in multiple types of civil items, such as threaded fasteners (e.g., screws, bolts, nuts, nut plates, studs, inserts), other fasteners (e.g., clips, rivets, pins), common hardware (e.g., washers, spacers, insulators, grommets, bushings), springs and wire; or (2) An item specifically excluded from control on the USML or the CCL; or (3) A ''part'' or ''component'' used as a ''part'' or ''component'' of an end item in ''serial production'' and not 'enumerated' on the USML or CCL (i.e., the end item is an EAR99 item), and the part's or component's form, fit, and function have not been altered for use in another end item enumerated on the USML or CCL after ''serial production'' of the end item not enumerated on the USML or CCL has begun; or (4) A ''part'' or ''component'' that can be exchanged with an EAR99 or AT only controlled ''part'' or ''component'' on a one-for-one replacement basis without modification to the form, fit and function of the EAR99 or AT-only ''part'' or ''component,'' and the EAR99 or AT-only part's or component's function is identical to the ''part'' or ''component'' at issue."*

IFI supports a common definition for both USML and CCL purposes and as defined above, most fasteners used in military aircraft would not qualify as "specially designed" and would not be subject to either the USML or the CCL.

If IFI's interpretation of the proposed rule and the application of a final "specially designed" definition is accurate, this application of little to no controls for "dual-use" fasteners would be consistent with the *Wassenaar Arrangement on Export Controls for Conventional Arms and Dual Use Goods and Technologies Munitions List*. If our interpretation is incorrect, we would appreciate the opportunity for further discussion with the appropriate Commerce Department officials.

Overall, IFI supports the Administration's approach since it retains USML control of critical fasteners that contribute to the properties of key U.S.-origin aircraft having low observable features or characteristics, makes clear that some other fasteners "specially designed" for military aircraft are subject to EAR controls, but recognizes that most other types of fasteners are truly commercial in nature and require little to no export controls as "dual-use" commodity items.

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Thank you for the opportunity to comment on the proposed rule. IFI would be happy to answer any questions you may have regarding export control reforms and their effect on fastener manufacturers. Please contact our Washington Representatives: Laurin Baker at 202-393-8525, or Jennifer Baker Reid at 202-393-8524 if you have any questions.

Sincerely,

Rob Harris
Managing Director

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