BAE Systems, Inc.
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BAE SYSTEMS

February 7, 2011

Sent via e-mail and courier

Mr. Timothy Mooney
Office of Exporter Services
Regulatory Policy Division
Bureau of Industry and Security
Department of Commerce,
1401 Constitution Avenue, NW, Room 2705
Washington, DC 20230,

Attention: Notice of Inquiry—CCL

Docket No. 101112562-0577-01

Re: Commerce Control List: Revising Descriptions of Items and Foreign Availability

Dear Mr. Mooney:

Thank you for the opportunity to comment on the Advanced Notice of Proposed Rulemaking regarding potential revisions to the Commerce Control List (CCL). BAE Systems, Inc. (BAE Systems) strongly endorses the President's export control reform initiative and shares its twin goals of strengthening national security and U.S. manufacturing competitiveness. In addition, BAE Systems fully supports the two primary objectives of this Federal Register Notice:

- Revising the CCL to make it more clear and more positive; and

- Screening selected items on the CCL for assignment into three tiers based upon the extent of their military or intelligence advantage to the United States and their foreign availability.

Towards these ends, below we have offered some general comments on the three tier control approach as well as comments on recommended changes to the tiers pertaining to specific ECCNs within Category 7 of the CCL, which is a particular area of interest for our company.

General Comments

While BAE Systems agrees in principle with the three tier control methodology adopted by the Bureau of Industry and Security (BIS) as part of the reform initiative, we are concerned that technological advancements could render certain tier assignments obsolete at a future date. Therefore, we respectfully recommend that BIS, as part of a separate rulemaking initiative, identify a mechanism for routine reviews and revisions of CCL tier assignments. We further recommend that such a mechanism include the opportunity for industry input.

BAE Systems also is concerned about the potential for the new tier assignments and ECCN revisions to increase the current level of control on items, especially those items previously

adjudicated under Commodity Classification Reviews (CCRs). Accordingly, we have two suggestions. First, we recommend that items previously reviewed and deemed EAR 99 continue to stand as EAR 99, as any such item would not provide a critical, substantial, or significant military or intelligence advantage to the United States. Second, we recommend that any forthcoming Proposed Rules from BIS regarding changes to ECCNs, clearly identify whether the change would result in an increased level of control for all or part of that ECCN. This would permit industry to review its product and technology matrices and its prior CCRs against the Proposed Rule(s), determine whether items potentially face an increased level of control, and more readily offer comments to BIS on those items.

Comments on Specific ECCNs

As noted in the chart below, BAE Systems proposes a modification of both 7D003.d and 7E004.b, which control certain flight control computer software source code and technology respectively. We recommend adding a clarifying note to each ECCN so that common computing elements and utilities that are associated with a standard digital computing environment can be exported more freely, as they are independent of the export sensitive item. It is our view that such software source code and technology does not fall within any of the three tiers. However, if these items must be controlled because of a national security or foreign policy reason, or due to a multilateral obligation, as stated in the Federal Register Notice, then Tier 3 would be appropriate. We recommend that such items have a licensing policy that is no more restrictive than that currently applied to 7D994 and 7E994 items.

BAE Product Description	Current ECCN	Current Reasons for Control	BAE Proposed Tier (1, 2, or 3)	BAE Proposed ECCN rewrite
Flight Control Computer Software Source Code	7D003 - d	NS-1, MT-1, AT-1	N/A or 3	NOTE: 7D003.d does not control software source code that is associated with common computer elements and utilities (e.g., input signal acquisition, output signal transmission, computer program and data loading, Built-in Test, task scheduling mechanisms) that do not provide a specific flight control system function.
Flight Control Computer Technology	7E004 - b	NS-1, MT-1, AT-1	N/A or 3	NOTE: 7E004.b does not control technology that is associated with common computer elements and utilities (e.g., input signal acquisition, output signal transmission, computer program and data loading, Built-in Test, task scheduling mechanisms) that do not provide a specific flight control system function.

Separate from the above described exclusions for software source code and technology associated with common computer elements and utilities, BAE Systems recommends that BIS assign a Tier 2 to selected ECCN subparagraphs in 7D003 and 7E004, as shown in the chart below. The basis for our Tier 2 assignment is that the subject software source code and technology is available from other multilateral regime partners. Specifically, we know this technology to be available from Thales in Canada and from our affiliate, BAE Systems (Operations) Ltd. in the United Kingdom, as evidenced by the following web sites:

- Thales - http://www.thalesgroup.com/Case_Studies/Markets/Aerospace/20100322_-_Innovation_on_G650/; and

- BAE Systems (Operations) Ltd. - http://www.baesystems.com/Newsroom/NewsReleases/autoGen_110919163822.html

BAE Product Description	**Current ECCN**	**Current Reasons for Control**	**BAE Proposed Tier (1, 2, or 3)**	**BAE Proposed ECCN rewrite**
Flight Control Computer Software Source Code	7D003 - d1	NS-1, MT-1, AT-1	2	N/A
Flight Control Computer Software Source Code	7D003 - d3	NS-1, MT-1, AT-1	2	N/A
Flight Control Computer Technology	7E004 - b1	NS-1, MT-1, AT-1	2	N/A
Flight Control Computer Technology	7E004 - b2	NS-1, MT-1, AT-1	2	N/A
Flight Control Computer Technology	7E004 - b3	NS-1, MT-1, AT-1	2	N/A

On behalf of BAE Systems, Inc., I would like to thank 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 Controls
BAE Systems, Inc.