February 7, 2011

Mr. Timothy Mooney
Office of Exporter Services, Regulatory Policy Division
Bureau of Industry and Security
U.S. Department of Commerce
1401 Constitution Avenue, N.W., Room 2705
Washington, DC 20230
ATTN: Notice of Inquiry – CCL

PM/DDTC, SA–1, 12th Floor,
Directorate of Defense Trade Controls,
Office of Defense Trade Controls Policy
ATTN: USML – Positive List
Bureau of Political Military Affairs
U.S. Department of State
Washington, DC 20522–0112

Re: Request for Public Comment on and Commerce Control List: Revising Descriptions of Items and Foreign Availability (75 Fed. Reg. 76,664) and Revisions to the United States Munitions List (75 Fed. Reg. 76,935) and Export Control Modernization: Strategic Trade Authorization License Exception (75 Fed. Reg. 76653)

To whom it concerns:

Intel Corporation appreciates the opportunity to provide comments on the above-referenced notices of proposed rulemaking dealing with the Commerce Control List (CCL) and the U.S. Munitions List (USML). Our comments also respond to the notice regarding a proposed License Exception Strategic Trade Authorization (STA). We are responding to these notices with a single submission in light of the interrelatedness of the inquiries presented by each.

Intel is a leading manufacturer of high-volume products related to computing, networking and communications. As a worldwide technology leader, we must comply with US export controls across the globe and around the clock. The task is sizable: Intel's business activities span over 100 countries, with nearly 80% of its sales taking place outside the U.S. These activities are characterized by high-volume distribution of mass-produced commercial products that are sold into a global network of thousands of customers ranging from original equipment manufacturers to distributors to retailers.

While heavily invested in the U.S., Intel also conducts substantial R&D, production, distribution and other operational activities on an international basis.

Export controls within this diverse international environment affect Intel's hardware products, software and technologies as well as equipment, materials and spare parts related to chip fabrication and final assembly facilities. They also apply to R&D operations, foreign national employees and global IT security. Further, the controls are increasingly affecting sales/marketing activities due to an expanding government focus on end use/user restrictions.

Against this background, Intel strongly supports efforts by the Administration to achieve fundamental reform of the export control system by refocusing controls on a "smaller yard" of items that present a genuine strategic concern. The Administration's efforts afford the opportunity to make the export control system more effective by eliminating unnecessary complexities, redundancies and requirements that undermine the efficient use of time and resources needed to focus controls on areas posing the highest national security risk. A more targeted approach is needed, moreover, because unreasonable or excessive controls entail much industry effort and restraint without resulting in purposeful or effective control. This reality is especially germane to commercial information and communications technology (ICT), where commoditization, high volume worldwide product distribution, ubiquitous networks and computing capability and the offsetting benefits of globalizing the ICT revolution make export controls largely counterproductive. The following specific comments embody these general perspectives.

CCL and USML Controls Lists

Intel encourages the Commerce and State departments to pursue fresh, innovative ideas in determining the scope and sensitivity of products and technologies relative to what should fall within the proposed 3-tier export control structure or within EAR99. To this end, we draw your attention to comments from both the Semiconductor Industry Association and TechAmerica with reference to list-related principles and criteria. Recommendations by these associations that Intel believes are especially meritorious span the following ideas:

- Focusing controls only on items of strategic national security significance as opposed to broadly restricting items of lesser sensitivity.

- Applying an EAR99 classification as a general matter to items that are, or will become, widely available, or are otherwise not susceptible of effective control. The same approach should apply to items for which broad foreign availability or capability exists.

- Realigning the CCL to comport with the structure of the USML by focusing controls on end products or equipment. In particular, components, technology and software should be identified in the form of subheadings within a listing for

an end item as opposed to being identified in a standalone control categories. In the area of components and integrated circuits (IC's), we recommend the following specific treatment:

- Component-related subheadings should only capture application-specific IC's or custom IC's that: (1) do not have a general commercial application; and (2) are peculiarly responsible for enabling the particular features of a controlled end item that create a military or intelligence-related advantage. Such IC's should fall under Tier 3 rather than Tiers 1 or 2 controls, since components make a contribution that is significantly less than an end item with respect to military or intelligence-related capabilities.

- General purpose IC's, and IC's that have general commercial applicability, should fall under EAR 99.

- Making certain that control lists contain exacting, objective criteria in a positive list format.

- Regularly updating control metrics for items to reflect technological realities, wide availability and foreign availability.

- Ensuring that the process of establishing a tiered control structure and accompanying CCL and USML lists does not impose restrictions and burdens that are more stringent than existing controls.

- Avoiding use of independent USML classifications for integrated circuits. Rather than being listed separately, IC's should be subsumed within the components-related provisions of the USML for purposes of determining whether controls apply. While the USML generally treats IC's in this manner, Category XV(d) independently establishes controls for IC's based on certain radiation hardness tolerances. As recommended by SIA, this anomalous listing should be eliminated because component-related controls are already established in Category 15(e) with respect to space-related end items.

- Assuring that components-related classifications in the USML (e.g., Category XV(e)) only apply to those components that are peculiarly responsible for the functions or features of a controlled end item that cause it to be controlled. Components should not be covered under such provisions merely because they are capable of being used in a military or intelligence application.

Strategic Trade Authorization License Exception

Intel commends efforts by the Administration to pursue license exceptions that reduce the unnecessary burdens and constraints associated with transactional licensing requirements. The creation of a license free zone for US-allied countries provides a number of positive features. Specifically, Intel appreciates the fact that the LE is

optional, allows exporters to export immediately, and applies to in-country transfers. The requirements contained in the STA proposal, however, create disincentives for Intel to use STA in lieu of existing license exceptions and site-licensing. Particular issues and recommendations for improvement include:

- The proposal contains exclusions for Category 3 and 4 as well as China, Russia and Vietnam that substantially limit the utility of License Exception STA. Encryption under Cat 5 Part 2 is also excluded. Intel believes the Administration should seriously consider broadening country and ECCN eligibility in order to increase the attractiveness of this license exception.

- The proposal creates potential for placing 3A001 items in Tier 1 of a revised CCL. We believe that controls on integrated circuits currently under this ECCN should be restructured as explained above in the above point regarding the need for a CCL realignment. In no case should a sensitive IC be placed in a tier other than Tier 3, since the capability of a component is inherently less than the capability of an end item.

- The proposal would put in place burdensome notification, destination control statement and consignee statement requirements that would likely compel many companies to take advantage of existing and less burdensome validated licensing or other license exceptions (GBS, CIV). Many customers could object to the extraterritorial nature of these requirements. Intel believes that U.S. government should look seriously at ways to simplify these requirements, including avoiding redundancies. For example, the destination control statement requirement should be eliminated altogether because language of this nature is now commonly included in sales contracts, PO agreements and other more effective methods of communicating compliance obligations

- In Intel's case, the limited dimensions of the proposed License Exception STA do not provide material benefit over the status quo. By contrast, adoption of workable ICT license exception would represent a substantial improvement over existing transactional export control requirements. We strongly encourage the Administration to revisit the ICT license exception with a view toward resolving past issues that have made the approach untenable.

We encourage the Administration to continue to pursue license exceptions that remove transactional export control requirements in a manner that serves US security interests while providing tangible incentives for industry utilization of such exceptions. The Administration deserves credit for proposing License Exception STA, and we are hopeful that improvements can be made that would increase its utility across the exporting community. As proposed, License Exception STA would very likely not be used by Intel, given both the burdens and limitations it imposes. In one instance where such a license exception could apply to our operations, Intel would almost certainly continue using a site license rather than License Exception STA, as proposed.

In conclusion, Intel urges both the Commerce and State departments to take this historic opportunity to fundamentally reform the scope and scale of existing CCL and USML control lists as opposed to pursuing past policies aimed at incremental changes. We also urge the Commerce Department to deploy new license exceptions like "STA" and "ICT" to the extent they provide useful improvements over existing requirements. We look forward to providing further comments on the Administration's export control initiative as proposed rulemakings emerge over the coming months.

Sincerely,

Jeff Rittener
Director, Global Export Compliance
Intel Corporation