The Boeing Company
929 Long Bridge Drive
MC 7949-5929
Arlington, VA 22202-4208

July 6, 2015

Mr. Timothy Mooney
Regulatory Policy Division
Office of Exporter Services
Bureau of Industry and Security
Department of Commerce
14th Street and Pennsylvania Avenue NW
Washington, DC 20230

Subject: RIN 0694-AG51, Additional Improvements and Harmonization of Export Clearance Provisions

Reference: Federal Register/ Vol. 80, No. 99/ Friday, May 22, 2015/ Proposed Rules

Dear Mr. Mooney,

The Boeing Company ("Boeing") appreciates the opportunity to provide comments to the Advanced Notice of Proposed Rulemaking ("ANPR") on Export Clearance Provisions in the Export Administration Regulations ("EAR"). The stated Bureau of Industry and Security ("BIS") reasoning for the changes under consideration are to improve export clearance requirements, to make them more effective, and to better harmonize them with the International Traffic in Arms Regulations ("ITAR"). The principle of harmonization is explained as being desirable where regulatory provisions are intended to achieve the same purpose - except where there are reasons to have different requirements.

Boeing believes it is not appropriate to subject largely No License Required ("NLR") commodities to the requirements described in the ANPR that are currently applied to military and satellite items. At Boeing, 72 percent of our EAR-controlled shipments in 2014, more than 40,000, were NLR. Requiring transaction-specific information on multiple documents for commodities with a low level of control would have a significant negative resource impact. Specifically, it would require extensive re-work of systems, processes, trainings, handoffs to freight forwarders, and multiple other aspects of shipping transactions.

1. <u>Export Control Documents</u>

It is not clear what documents are within the scope of the proposed changes, which is critical when trying to determine impacts. The definition of "export control documents" in Part 772 includes a long list of export-related items. In the ANPR, BIS states that "export control documents" means "contractual documentation" and the commercial invoice. However, the

term "contractual documentation" is not defined. One could reasonably interpret the term to mean those documents that address the legal obligations between the parties to the transaction, such as the governing contract. However, contracts and their amendments and multiple annexes and attachments do not travel with shipments. Also, a contract may have been in place for years and are invariably executed before any orders are actually shipped. At Boeing, all contracts include standard clauses requiring the parties to comply with relevant export and import control laws and regulations. Amending contracts to include information specific to a particular shipment would be both difficult and would not alert shipment recipients of classifications and requirements. If the term 'contractual documentation' is used it should be clearly defined, and should specifically exclude the governing contract, as amended.

2. ECCNs on Export Control Documents

Boeing does not agree with a blanket requirement to include ECCNs on all export control documents. Boeing, as an AES*Direct* filer, can include ECCN information in our commercial invoice. We also provide ECCNs to freight forwarders. It is therefore unclear whether BIS would require freight forwarders to include ECCNs on their documents (air waybills or bills of lading) as part of the changes being considered in the ANPR. As stated in our comments to BIS's Proposed Rule on Harmonization of the Destination Control Statement ("DCS"), Boeing recommends that required information (whether DCS or ECCN) be placed on only one document that accompanies the freight and leave it to exporters to determine the appropriate document in accordance with its shipping practices. Imposing requirements on exporters that they must then flow to other parties to a shipping transaction adds complexity and compliance risk.

3. Country of Ultimate Destination on Export Control Documents

BIS states in the ANPR that in most cases the country of ultimate destination is already identified on shipments. The ultimate consignee country is provided on all shipping documents, including for NLR exports. This may not be the ultimate destination country (in the case of further distribution) or the ultimate end use country. For example, Boeing may ship commercial airplane parts, which in almost all cases are NLR, to a Maintenance, Repair and Overhaul facility in Amsterdam, which are then issued to airline customers from other countries. Should this requirement be adopted, BIS needs to clarify that the country of ultimate destination does not mean country of ultimate end use. Including country of ultimate end use on NLR items would be very difficult in the case of mixed and consolidated shipments and is not justified for commodities with low levels of control. Boeing recommends requiring ultimate consignee country only on the appropriate document in accordance with an exporter's shipping practices.

4. <u>License Number or Export Authorization Symbol on Export Control Documents</u>

Our comments in item 2 above apply here as well. Including license numbers or authorization symbols on export control documents is a capability exporters may already have for some documents, but not for all. Boeing recommends that this information be required only on the commercial invoice or other document in accordance with an exporter's shipping practices.

5. <u>Require AES Filing for exports to Canada for NS, MT, NP and CB items.</u>

Boeing exports thousands of shipments to Canada annually for which AES filing is not required. Many of these exports relate to commercial aircraft production, including items that are assembled in Canada to be returned to the United States for use in Boeing production facilities. If AES filings for Canada were required for only the CB, MT, NP, and NS reasons for control, exporters would have to examine each export to find the few that likely must be filed in the Automated Export System ("AES"). This would result in a significant burden as automated trade control tools and systems do not currently exist for this type of identification. Given the potential impact, Boeing recommends the establishment of a working group with industry that can develop a solution that meets the BIS desire for visibility with minimal disruption to trade with Canada.

6. <u>Other Suggestions for Improvement</u>

The current text in 758.1(b)(6) would be much clearer if revised as follows:

(b) When is an EEI filing required to be filed in the AES

~~Except when the export of items subject to the EAR is to take place electronically or in an otherwise intangible form, y~~ You must file EEI in the AES ~~with the United States Government for~~ **when exporting tangible** items subject to the EAR, including exports by U.S. mail, in the following situations: ….

Thank you for the opportunity to provide comments. Please do not hesitate to contact me if you have any questions or need additional information. I can be reached at 703-465-3505 or via email at christopher.e.haave@boeing.com.

Sincerely,

Christopher Haave
Director, Global Trade Controls