The Boeing Company
1200 Wilson Boulevard
Arlington, VA 22209-1989

September 9, 2013

Mr. Brian Baker
Director, Electronics and Materials Division
Office of National Security and Technology Transfer Controls
Bureau of Industry and Security
U.S. Department of Commerce
14th Street and Pennsylvania Avenue NW
Washington, DC 20230

Subject: **Revisions to the Export Administration Regulations (EAR): Control of Military Electronic Equipment and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML)**

Reference: **RIN 0694-AF64**
Federal Register/Vol. 78, No. 143/Thursday, July 25, 2013

Dear Mr. Baker,

The Boeing Company ("Boeing") welcomes the opportunity to comment on the referenced Proposed Rule. Many of the military electronics issues we raised in our submission for the original Bureau of Industry and Security ("BIS") Proposed Rule have been addressed. Boeing's most serious concerns in this category do not relate to the creation of 600 series categories to house formerly USML items of lesser significance. As explained below, we continue to see encroachment by the revised USML on items that have historically been controlled on the Commerce Control List ("CCL") by your agency. Boeing also provides input on 600 series paragraph "y" items.

USML Controls on CCL Items

The attached Boeing letter to the State Department commenting on its revised military electronics rule explains more fully our concerns with apparent movement of items from CCL to USML control. We describe below specific concerns with International Traffic in Arms Regulations ("ITAR") controls proposed for Category XI that capture technologies with commercial heritage intended for commercial applications. Because the proposed USML text does not contain limiting language such as "specially designed for the items controlled in this category", it appears that certain items are moving out of BIS jurisdiction. Boeing's letter to the State Department provided suggested revisions to the proposed controls below to eliminate the capture of items that are currently EAR controlled. In the alternative, we recommended that DDTC utilize the term "'specially designed" throughout Category XI to avoid the inadvertent capture of commercial items.

- ***Bi-static/multi-static radar*** **proposed for control in USML Category XI (a)(3)(xxvii)** is in commercial development as part of an initiative to develop capabilities to improve flight safety in the vicinity of UAV operations and airports

not controlled by traditional air traffic management. Boeing has extensive commercially-derived technology related to bi-static radar currently classified and marked as ECCN 5A001.g.

- ***Airborne radar*** **proposed for control in USML Category XI (a)(3)(i)** captures radars that track weather cells over time currently installed on the majority of operating civil transport aircraft. Additionally, they are currently under active development within Boeing as part of a collision avoidance system for general aviation aircraft and for possible application to civil UAVs. Commercial radar systems under development by Boeing have been classified under ECCN 5A001 and significant technology already exists under this classification.

- ***Air surveillance radar*** **proposed for control in USML Category XI (a)(3)(ix)** appears to capture systems in commercial development that are seen as critical for enabling the safe operation of UAVs in the portion of the national airspace where transponders are not required on manned aircraft. These systems may significantly improve the safety of commercial aircraft operating at uncontrolled airports.

- ***Antennas*** **proposed for control under USML category XI (c)(10)(i)** appear to capture phased array SatCom antennas for satellite communications that are ubiquitous on commercial aircraft today. These SatCom systems enable voice and data communications outside the aircraft during flight (aircraft position, telephone, and internet).

- ***Radomes or electromagnetic antenna windows*** **proposed for control under USML category XI (c)(11)(ii)** could be interpreted to control SatCom radomes because "radar bands" has not been defined. We see potential confusion as to whether specific communications bands could be considered by the Department of State to be "radar bands".

- ***High-energy storage capacitors*** **proposed for control in USML Category XI (c)(5)** cover items currently in commercial use. Because of the lack of inherent military functionality of a capacitor, no current control on generic capacitors in the USML, and the availability of existing controls in the EAR, Boeing recommends retaining controls on these items under ECCN 3A001.

600 Series Paragraph "y"

BIS sought comment on the desirability of four proposed alternatives to address paragraph "y" items of limited military significance. Boeing finds BIS option (1) the most desirable, namely, creating separate ECCN-specific "y" paragraphs as it has been doing to

date. This is easier to navigate than Option (2), a single list containing all 600 series items subject only to anti-terrorism and China military end-use controls. Options (3) and (4) involve eliminating the "y" paragraph altogether. This will result in significant overcontrol of many items, which we do not support.

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 314-232-9527 or via email at gregory.j.sloan@boeing.com. Alternatively, you can reach out to my colleague in our Arlington office, Chris Haave, at 703-465-3505 or via e-mail at christopher.e.haave@boeing.com.

Sincerely,

Gregory J. Sloan
Director, Global Trade Controls

Attachment: Letter to DDTC, Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Category XI