October 3, 2013

Mr. Terry Davis
Office Director, Defense Trade Controls Licensing
Directorate of Defense Trade Controls
U.S. Department of State
Washington, DC 20522

Dear Mr. Davis:

The Aerospace Industries Association (AIA) and our member companies welcome the opportunity to provide comments on the Directorate of Defense Trade Controls' published chapter "Section 20.0 Export Control Reform" of the "Guidelines for Preparing Electronic Agreements." Providing guidance on implementing the requirements of export control reform that will soon begin to take effect is critical in making the improved export control system as predictable, transparent, and efficient as possible.

AIA and our member companies thank the Administration for their tireless efforts of export control reform. Below please find AIA's questions, comments and suggested revisions for Section 20.0 Export Control Reform.

Section 20.0 Export Control Reform

Section 20.1(d)

Comment: This section indicates that the use of the (x) subcategory is limited to agreements with United States Munitions List (USML) hardware, which is inconsistent with the amended International Traffic in Arms Regulations (ITAR), the amended Export Administration Regulations (EAR), and the Transition Plan published in the Federal Register. The limitations imposed on using (x) will likely result in applicants to double license its export activity that captures only data and services. AIA does not believe that this conforms to the intent of export control reform. For example, many companies have agreements in place that authorize global engineering work to occur on military aircraft and engines. After transition, the control status of that technical data will be split across the USML and Commerce Control List (CCL) 600 series, but there would not necessarily be hardware associated with that export activity. AIA and our member companies do not understand and seek clarification as to why DDTC would prevent (x) technical data from being included in such an agreement so long as there remains some USML-controlled activity.

Recommendation: AIA urges DDTC to remove this section from Section 20.0. If this requirement is not removed, exporters will be required to obtain and manage multiple licenses for the same transaction, which is exactly what the (x) vehicle was designed to prevent.

Section 20.1(g)

Comment: This section states that agreement values must not include the value of the (x) subcategory commodities, software or technical data. The hardware value of the agreement will only include USML hardware. Our member companies believe that the elimination of value related to CCL items and technology should not be a retroactive requirement and should only apply on a go forward basis.

Recommendation: Revise the language to read: *"New agreement values must not include the value of the (x) subcategory commodities, software or technical data. The hardware value of the agreement will only include USML hardware."*

Table 20.1 (Row 2, Column 3), 20.4(a)

Comment: The statement, *"Agreement is valid until its expiration date. USML subcategories must be corrected whenever the applicant submits the next major amendment"* conflicts with Section 20.4(a) which states in the final sentence, "*In accordance with Table 20.1, however, this option would cease on October 16, 2015 if no amendment to the agreement were submitted, approved, and executed."* If the above statement remains, then every agreement that contains USML CAT VIII(h) will result in changes to the USML category since VIII(h) is no longer a stand-along USML category and would require an amendment to the transmittal letter.

Recommendation: Industry should not be required to amend an agreement to update USML categories and sub-categories. Table 20.1 Row 2, Column 3 should remain as written and delete the last sentence in section 20.4(a).

Sections 20.1 (f), 20.3 (b)

Comment: With regards to amending agreements to include (x), there is currently no requirement to specify the USML or CCL categories associated with an agreement within the body of the agreement itself. Therefore, all that would require amending is the letter of transmittal associated with the agreement, which is not viewed by the foreign parties. Requiring a revised letter of transmittal to only add (x) to every agreements would be very time consuming and make the process very inefficient, contrary to ECR's original intention. Furthermore, little to no value would be added, as specific license requirements are already identified in order to export utilizing (x) on a license. In addition, a new transmittal letter would be required with each subsequent release of revised USML categories if more than one USML category exists within the agreement ***Note:*** *We understand that this proposed section of the guidelines (specifically section 20.3(a)) implements a requirement for industry to include a specific description of all hardware to include (x) category hardware, but our member companies believe that a breakdown of hardware to such a level of specificity to include all potential (x) items that could be exported over the duration of an agreement would be excessive (see comments in regarding Section 20.3(a)).*

Comment: The statement *"ECR changes may result in a devaluation of the agreement, but a devaluation based solely on the value of transitioned items does not require a major amendment"* implies a minor amendment is required to devalue. It is understood by industry that the transition of defense articles to

the CCL may result in a reduction in hardware and technical data value associated with the agreement. However, AIA's member companies see no benefit associated with reducing the value of a previously approved agreement. In addition, a requirement to reduce value would require subsequent reductions with the release of each new transitioning USML category included in the agreement.

Comment: The guidelines identify the need for a minor amendment(s) in order to add subcategory (x) to an agreement and incorporate the ECR changes. However, the USML category is only present in the transmittal letter and not in an actual agreement. DDTC has advised some AIA member companies at past conferences and workshops that to implement the inclusion of (x) a company would submit a letter to DDTC through DTRADE with the original agreement attached along with an explanation for the addition of (x) with the identifications of the export control classification numbers (ECCN). Industry would then send a letter to the signatories formally telling them that the ECCN(s) were now under the Technical Assistance Agreement (TAA).

AIA believes that the requirement to initiate a minor amendment(s) and obtain the signatures of the foreign party is contradictory to previously provided advice by DDTC to some of our member companies. Furthermore, we feel that this requirement contradicts the intent of ECR by making industry submit all new amendments for existing agreements. Although DDTC is not requiring, in some instances, the need for their formal approval, industry will be inundated with the requirement to obtain minor amendments for all agreements and obtain the signatures of their foreign counterparts. The amount of work required to do this type of transition work will be difficult for some companies, especially small and medium-sized businesses, to implement within the two year time period. Lastly, there is currently no requirement within the ITAR for executing a minor amendment for a change in USML category; therefore we question the legal basis for this requirement.

Recommendation: AIA urges DDTC to remove sections 20.1 (f), 20.3 (b) from Section 20.0. Amending an agreement to allow for the inclusion of (x) will have already been submitted in a revised letter of transmittal. In order to meet the requirements specified in the final rule, DDTC should issue a blanket web notice allowing for the submission of IFO licenses including (x) sub-category items so long as the specific license requirement for using (x) are met. If these sections are not removed AIA would appreciate the inclusion of language to further clarify 20.3(b), making it explicit that agreements impacted by ECR but not required to process an amendment by the guidelines will remain valid until their original expiration dates.

Section 20.2(c), 20.3 (b)

Question: Both of these sections reference Section 20.1 (e), which addresses expirations dates. Was the section that was meant to be referenced 20.1 (f)?

Section 20.3 (a)

Comment: This section requires changes to section 124.7 of the agreement to address ECR, then will require changes to address the new definition of defense services, and then will require changes to address the new definition of technical data. The latter two will constitute a change in scope, triggering a major amendment that will require DDTC approval and execution by all parties.

Comment: This section implements a requirement for industry to include a specific description of all hardware to include (x) category hardware which would be excessive and counter-productive to the use of (x). Currently, there is no requirement to specify USML categories or sub-categories of hardware within §124.7(1), and it is acceptable to provide a rolled up description such as "spare parts, components, and accessories" as an entry under §124.7(1). AIA member companies feel that creating a breakout of these parts, components, and accessories, as well as differentiating between those that will remain on the USML and those that will fall under the CCL is would be virtually impossible to predict over the 10 year life of an agreement and therefore is not feasible. Since the IFO license and not the agreement itself is the vehicle for allowing the export of hardware, and specific requirements are in place to allow for (x) to be included on the license, the requirement to include such specificity within the body of the agreement itself provides no perceived value to the USG reviewer.

Recommendation: AIA urges DDTC to remove 20.3(a), eliminating the requirement to differentiate between USML and CCL articles in the agreement. Requirements for including commerce items on the IFO license will ensure the requirements of §123.1 are satisfied. If DDTC chooses not to remove this section then we urge that the process be streamlined, including expediting the final rules for technical data and defense services. In addition, DDTC should prioritize its plan to remove the signature requirements for parties to Agreements which would greatly ease the administrative burden on exporters.

Section 20.4(b)

Comment: See comment on 20.1(g) regarding the elimination of requirements to specifically amend letters of transmittal to include (x).

Recommendation: Delete 20.4(b)

Best Regards,

Remy Nathan
Vice President, International Affairs
Aerospace Industries Association