BIGELOW General Contractor providing design, engineering & assembly of space complexes.

July 5, 2013

Via E-mail to: publiccomments@bis.doc.gov

Regulatory Policy Division
Bureau of Industry and Security
U.S. Department of Commerce, Room 2099B
14th Street and Pennsylvania Avenue, NW
Washington, DC 20230

Comments Regarding Proposed Rules for Control of Spacecraft Systems and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML)
RIN 0694-AF87

First and foremost, we would like to applaud the work of the Bureau of Industry and Security ("BIS"), the Department of Commerce, and all of your colleagues at the Department of State, the Department of Defense, and on Capitol Hill that have supported the Export Control Reform process. The passage of the 2013 National Defense Authorization Act ("NDAA"), represents a unique opportunity to combat an export control regime that has become obsolete, inefficient, and counterproductive. Thanks to your work and that of numerous other government officials, changes can now be made to the U.S. export control process that will prevent more jobs from being sent overseas while actually enhancing American security. Therefore, while you're certain to receive a variety of suggested changes and even criticisms of the proposed rules, we want to emphasize just how important this process is not only to Bigelow Aerospace but to the commercial space industry as a whole. For example, at its most recent meeting on May 15th, the Commercial Space Transportation Advisory Committee ("COMSTAC", the Federal Advisory Committee to the FAA's Office of Commercial Space Transportation which is comprised of individuals representing a broad spectrum of the commercial space industry) unanimously approved the following observations:

> *"COMSTAC applauds the passage of the National Defense Authorization Act for Fiscal Year 2013 restoring authority to the President to transfer satellites from the United States Munitions List ("USML") to the Commerce Control List ("CCL") to allow for the appropriate control of technology and promote the competitiveness of the domestic space industry. COMSTAC strongly encourages the timely implementation of the provisions in the FY2013 NDAA and the transfer of certain defense articles on Category XV of the USML to the CCL as proposed by the Departments of Defense and State Report to Congress pursuant to Section 1248 of the NDAA for Fiscal Year 2010 ("Section 1248 Report")."*

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Additionally, we would also like to express our strong support for the manner in which the 'passenger experience' will be treated under the proposed rules. The export control demands on passengers for commercial space operations have always been a grave concern for Bigelow Aerospace, and led to our filing a Commodity Jurisdiction request in late 2007. The response to our request from the Directorate of Defense Trade Controls ("DDTC"), received in 2009, stated that the passenger experience for foreign nationals was still under the International Traffic in Arms Regulations but that specific aspects of the experience (internal and external exposure to Bigelow spacecraft, training to live and work on the spacecraft, etc.) were deemed to be non-licensable activities. Although there were minor limitations (such as a caveat excluding 126.1 countries and a mutually acceptable prohibition on foreign nationals operating or maintaining our spacecraft), the relief granted by this response to our Commodity Jurisdiction request allowed Bigelow Aerospace to continue to invest in developing its technology confident in the knowledge that our business plan could be implemented without facing any problematic export control issues.

Under the rules proposed by the BIS, it's our understanding that the relief that we were granted via Commodity Jurisdiction request will in essence be extended out industry-wide, specifically, that the 'passenger experience' and any technologies required for passenger participation in space travel will no longer be regulated per se under Category XV or BIS's new ECCN 9E515. We fully support this determination, and believe it represents an improvement upon the path contemplated within the appendix of the Section 1248 Report.

Finally, while the current rules proposed by BIS and the DDTC represent a significant step forward, we believe that it's important to recognize that technology is not static, and that the U.S. export control regime will always be in need of review and revisions. Therefore, we recommend that a formal, mandatory, and regular process be established to conduct an interagency review of the CCL and USML on an ongoing basis. The Administration was previously considering something akin to this during the push for a single list, wherein twenty percent of the USML was going to be reviewed every year for five years. Without delving into the details of a specific approach, again, we believe that establishing a formal ongoing mechanism for review will ensure that both American security and commerce are supported by the national export control regime.

Thank you for your time and consideration of these comments. Should you require more information or have any additional questions for me either as Director of D.C. Operations & Business Growth for Bigelow Aerospace, or in my role as chair of the COMSTAC, I can be reached by phone at (240) 235-6016 or via e-mail at mgold@bigelowaerospace.com.

Sincerely,

Mike N. Gold
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Bigelow Aerospace, LLC