STANFORD UNIVERSITY

ANN M. ARVIN
VICE PROVOST
DEAN OF RESEARCH

July 8, 2013

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

Re: RIN 0694-AF87

Dear Madam or Sir:

Stanford University appreciates the opportunity to comment on the U.S. Department of Commerce Bureau of Industry and Security's Proposed Rule (RIN 0694-AF87) regarding the transfer of non-military spacecraft systems and related items from the U.S. Munitions List to the Commerce Control List (CCL). Our institution is grateful for this Administration's effort to advance needed reforms to current export control policies.

The Council on Government Relations (COGR), the Association of American Universities (AAU), the Association of University Export Control Officers (AUECO) and Yale University have submitted detailed comments on the proposed change. In addition to the comments below, we join COGR, AAU, AUECO and Yale in support of their recommendations.

Stanford by express policy engages only in "fundamental research" as defined by U.S. National Security Decision Directive 189 (NSDD 189 - "National Policy on the Transfer of Scientific, Technical and Engineering Information") and implemented by regulation through the Export Administration Regulations (EAR -15 CFR 734.8) and the International Traffic in Arms Regulations (ITAR - 22 CFR 120.11). In pursuing fundamental research, Stanford is committed to the principle of freedom of access by all interested parties to the underlying data, to the processes and to the final results of research. In keeping with this commitment, Stanford does not accept research agreements that limit the publication of results or that limit the participation of researchers in the intellectually significant portions of a project on the basis of citizenship.

Although the transfer of spacecraft, satellites and related items that do not pose military or intelligence concerns from the ITAR to the EAR represents a significant step forward, we strongly disagree with the Proposed Rule's modification the definition of "use" technology for 500 and 600 series items, particularly in the proposed new ECCNs 9D515 and 9E515. Given the above cited university-based research policies, if the Proposed Rule is implemented in its current form, sections ECCNs 9D515 and 9E515 would restrict the ability of Stanford and many of our nation's premier

research universities to pursue federally funded research in space science. Such a change would significantly harm the nation's economic and national security by limiting the opportunity and ability to engage in classroom instruction and to conduct fundamental research in this important scientific area.

With respect to technology, "use" is currently defined in EAR Part 772.1 as "operation, installation…, maintenance…, repair, overhaul **and** refurbishing." Several of the new proposed 500 and 600 series of software and technology are defined as those specifically designed or required "for the development, production, operation, installation, maintenance, repair, overhaul **or** refurbishing of spacecraft and related commodities…." For those technologies moving from the ITAR to EAR, the definition of use will change from "and" to "or", making it a deemed export simply to convey widely available commercial operating instructions for some software and technologies. The result will be that the "use" of 500 (and 600) series items will be subject to restrictions not applicable to most EAR items, creating confusion and significant compliance challenges.

Stanford agrees with COGR, AAU, AUECO and Yale in that this new definition of "use" would raise the potential for a greatly increased need for deemed export licenses on the campuses of fundamental research universities, universities that by policy do not restrict the participation of their students on the basis of citizenship. We are concerned that once it becomes a deemed export to convey operating instructions for items used in research applications that have been explicitly identified as civil and non-strategic, even where no other information concerning the installation, maintenance, repair, overhaul and refurbishing is conveyed, universities conducting fundamental space science research would be required to vet every foreign student who might learn to operate commercial equipment or download commercial software in the course of fundamental research to determine the need for deemed export licenses.

Research universities would also have to agree to take on such federally funded space science research, despite the immense compliance burden it would entail, since over forty percent of all graduate students in science and engineering come from outside the U.S. at most of the nation's top research institutions. In short, this new, expansive definition of "use" will likely erode the benefit associated with the transfer of this technology from the ITAR to EAR.

Stanford University believes that one of the key principles to technological preeminence in the U.S. is open and collaborative basic research. To that end, we urge you to reconsider the proposed definition of "use" technology for 500 series items. We also urge you to revisit the 600 series to ensure that the definition of "use" technology is consistent with the current EAR definition.

Please do not hesitate to contact me if Stanford can be of help going forward.

Sincerely,

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Vice Provost and Dean of Research

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