These comments are submitted by EADS North America Inc., on behalf of itself, of the EADS Group Export Compliance Office and of the EADS entities in France, Germany, Spain, The Netherlands and United Kingdom which constitute Airbus, Astrium, Cassidian and Eurocopter.

Comments to the Commerce proposed rule

BIS rule making 2013-0012

RIN 0694- AF87

To the Attention of publiccomments@bis.doc.gov

Part 772.1 - Definition of "Space Qualified"

The proposed definition of ''Space-qualified'' is as follows:

"Designed, manufactured, or qualified through successful testing, for operation at altitudes greater than 100 km above the surface of the Earth."

We believe that as written this definition is too vague:

The term "*or qualified through successful testing for operation at altitudes greater than 100 km above the surface of the Earth"* does not include a notion of mission duration or of protection against the environment. Thus, a mass market or automotive part, with no radiation tolerance but which would have been for instance subjected to additional testing to eliminate infant mortality and embedded into a space mission that would offer a compatible environment (such as shielding against radiation, short mission and limited temperature excursion) would be captured as "Space Qualified" and become 9A915.x even though the original part may have been EAR 99 and has not been modified.

- The use of "*or*" in "*Designed, manufactured, or qualified through successful testing*" seems to be in contradiction with the second note of the definition which intend is to exclude from being "space qualified" , parts and components which have not been "specifically designed" for a spacecraft.

- Conversely, the first note excludes from being "space qualified" items which are not individually tested for altitudes greater than 100 km. Due to the fact that radiation testing is destructive, it is industry practice to test radiation tolerance on lot samples and not on the individual parts which are going to be used on spacecraft. The note would result in excluding from being "space

EADS North America
2550 Wasser Terrace, Suite 9000, Herndon, VA 20171
Tel: 703-466-5600 - Fax: 703-466-5601

qualified", parts which have been determined to be radiation tolerant as a result of being of the same manufacturing lot than samples successfully tested as being radiation tolerant.

- "*Operation at altitudes greater than 100 km above the surface of the Earth"* should have a notion of duration in order to avoid capturing mass market parts which have been merely screened to increase reliability; this can be achieved either by combining "designed, manufactured and qualified" instead of "or qualified", or by specifying a minimum radiation total dose capability. (We propose 30 Krads).

We propose modifying the definition to read:

''Space-qualified'' (Cat 3, 6, and 9) Designed, manufactured, and qualified through successful testing, for operation at altitudes greater than 100 km above the surface of the Earth or meeting or exceeding a total dose of 3x 10^4 Rads (SI).

Part 772.1 - "Space Qualified" and prior determination

The proposed definition of "Space Qualified" does not include an "exclusion" for prior determination through a commodity jurisdiction (CJ) determination or interagency-cleared commodity classification (CCATS) pursuant to § 748.3(e).

As a result, a part that has been previously determined to be for instance EAR 99 through a Commodity Jurisdiction could see its classification become 9A915.x by virtue of meeting the criteria of "Space Qualified", i.e. qualified through successful testing, for operations at altitudes greater than 100km above the surface of the Earth, even though the design, performances and testing flow of this part are the same that had been previously reviewed by the U.S. Government during the CJ or CCATS process.

We suggest that, similarly to the definition of "Specifically Designed" (§772.1 specially designed b) 1) , the definition of "Space Qualified" includes a similar exclusion.

We propose adding to the definition of "space qualified" the following language:

Space Qualified …….. (a) A ''part,'' ''component,'' ''accessory,'' ''attachment,'' or ''software'' is not ''space qualified'' if it: (1) Has been identified to be in an ECCN paragraph or as an EAR99 item in a commodity jurisdiction (CJ) determination or interagency-cleared commodity classification (CCATS) pursuant to § 748.3(e).

EADS North America
2550 Wasser Terrace, Suite 9000, Herndon, VA 20171
Tel: 703-466-5600 - Fax: 703-466-5601

3A 001 and 9A515 : MT1 Control when "usable in" missiles

MT1 applies to 3A001.a.1.a and 9A515 d. when ''usable in ''missiles'' for protecting ''missiles'' against nuclear effects (e.g. Electromagnetic Pulse (EMP), X-rays, combined blast and thermal effects). The term "usable" is vague and there is no technical definition included of the level of performance which is considered as appropriate for protecting "missiles" against nuclear effects, and the identification of the relevant level of performance is usually classified.

We suggest that either some characteristic be included or that reference be made to standards such as TEMPEST or NATO STANAG.

We propose adding a note to 9A515 "Reason for control MT" as follows:

Note: i.e. meeting or exceeding the characteristics determined by applicable U.S. or International standards related to the protection of missiles against nuclear effects.

Part 750.7 and Part 758.6 - STA Consignee statement , Destination Control Statement and applicability of 750.7. i) termination of license conditions

It is our interpretation that as per 750.7(i), a foreign entity would not be bound by the prior STA Consignee Statement and Destination Control Statement that is associated with a "600 or 500 series' item, when retransferring or reexporting the items, under the authority of De Minimis after integration into a larger assembly or as a result of an additional applicable Commerce Exception (APR, TMP, etc.).

We proposed modifying the language of 750.7(i) as follows:

750.7 (i) Terminating prior exemption and license conditions: Exporters and reexporters who have shipped under ~~licenses~~ an authority (i.e., an exception or license) with conditions that would not apply to an export under License Exception or if no license was required, and foreign consignees who have agreed to such conditions, are no longer bound by these conditions when the ~~Licensed~~ items become eligible for a License Exception or can be exported or reexported without a license.

We are available for further discussion and to provide further information, please contact Corinne Kaplan via telephone at 703-466-5741 or via email at Corinne.Kaplan@eads-na.com.

EADS North America
2550 Wasser Terrace, Suite 9000, Herndon, VA 20171
Tel: 703-466-5600 - Fax: 703-466-5601

Respectfully,

Pierre Cardin	Corinne Kaplan
Senior Vice President	Vice President, Affiliate Trade and Export Compliance
EADS Group Export Compliance Officer	EADS North America

EADS North America
2550 Wasser Terrace, Suite 9000, Herndon, VA 20171
Tel: 703-466-5600 - Fax: 703-466-5601