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Submitted Via E-Mail (publiccomments@bis.doc.gov)

Attn: Regulatory Policy Division
Bureau of Industry and Security
U.S. Department of Commerce

Re: Export Administration Regulations (EAR): Control of Spacecraft Systems and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML) (RIN 0694-AF87)

Lockheed Martin Corporation (Lockheed Martin) is pleased to submit comments on the proposed rule issued by the U.S. Department of Commerce and published in the Federal Register on Friday, May 24, 2013 (78 Fed Reg. 101.)

The proposed rule describes how certain articles the President determines no longer warrant control under U.S. Munitions List (USML) Category XV (Spacecraft Systems and Related Articles) would be controlled on the Commerce Control List (CCL). This proposed rule is being published in conjunction with a proposed rule from the Department of State, Directorate of Defense Trade Controls, which would amend the list of articles controlled by USML Category XV (RIN 1400-AD33) and amend the current definition of "defense services." The following comments are intended to augment comments submitted to the Department of State regarding that proposed rule, as many of the recommendations would affect how spacecraft systems and related items will be controlled on the CCL.

I. GENERAL COMMENTS: GLOBAL COMMERCIAL SATELLITE INDUSTY OPPORTUNITIES

Lockheed Martin commends the U.S. Government's continued commitment to implementing comprehensive export control reform. The ongoing effort to restructure the export control technology control lists by moving less-sensitive items from the USML to the CCL is the first step toward reforms that improve U.S. national security and economic competitiveness abroad. The proposed changes to Category XV are a particularly important part of this positive effort. When finalized, the proposed rules will implement the provisions of the 2013 National Defense Authorization Act, signed into law on January 2, 2013, which authorizes the President to remove certain satellites and related items from the USML, returning control of these commercial items to the U.S. Department of Commerce.

The changes to controls on satellites and related items outlined in the proposed rules closely resemble the recommendations contained in the Department of State and Department of Defense April 18, 2012 *Report to Congress: Section 1248 of the National Defense Authorization Act for*

Fiscal Year 2010 (Public Law 111 - 84). We concur with the U.S. Government's rationale for implementing these changes as set forth in the conclusions of that report:

> [M]aintaining non-critical satellites and related components on the USML and monitoring low-risk launch activities provide limited national security benefits. Moreover, this practice places the U.S. space industrial base at a distinct competitive disadvantage when bidding against companies from other advanced satellite-exporting countries that have less stringent export control policies and practices. Transferring select items from the USML to the CCL would allow for controls consistent with other technologies and would help enhance the competitiveness of the U.S. space industrial base, while continuing to protect U.S. national security needs.

Lockheed Martin designs, develops, tests, manufactures and operates a full spectrum of advanced-technology space systems for national security, civil and commercial customers. Export sales are more important than ever to the success of U.S. commercial satellite manufacturers and to the overall health of the U.S. space industrial base, which provides thousands of high-quality jobs in research and development, engineering, and manufacturing throughout the United States. Improvements that streamline export controls on commercial satellites and related programs help to make companies like Lockheed Martin – and the thousands of suppliers and component manufacturers we work with to build our systems – more competitive in the international marketplace. In particular, implementation of the proposed rules will help to address the misperception that U.S. export controls pose an insurmountable barrier to commercial and scientific space cooperation with U.S. companies.

It is important to note that the transfer of licensing jurisdiction of the space-related items to the CCL does not constitute a decontrol of sensitive technologies. Rather, the reforms outlined in this proposed rule, and other rules restructuring the USML and CCL, ensure that certain items and capabilities are appropriately controlled as commercial items. Regardless of whether a space-related export is a defense article or commercial item, Lockheed Martin remains deeply committed to working with the U.S. Government to prevent the unauthorized release of sensitive capabilities and technologies.

In addition, we note that the positive effect of transferring licensing jurisdiction is not limited to facilitating traditional exports. That is, controlling commercial technologies on the CCL reduces regulatory and procedural burdens on appropriate foreign party participation in U.S. civil and commercial space programs inside the United States, including many U.S. Government space programs Lockheed Martin supports. By minimizing the regulatory compliance burden, the proposed State and Commerce Department rules will help to reduce costs, improve efficiencies, and facilitate greater space cooperation with our allies and partners.

Taken together, Lockheed Martin believes that the new law and proposed regulations will help to strengthen the U.S. satellite industry, restore U.S. competitiveness abroad, and create new jobs here in the United States – while continuing to protect vital U.S. national security interests. We appreciate the collaborative efforts of the U.S. Government and U.S. Congress in this area, and we look forward to continuing to work toward expanding the international market share of the

U.S. commercial space industry in accordance with established U.S. national security, economic, and foreign policies.

II. SPECIFIC COMMENTS ON THE PROPOSED RULES

As a general matter, if implemented in their current form, the draft regulations would have positive benefits for the U.S. commercial space industry. However, the following comments are intended to highlight where the proposed rules would benefit from further clarification and/or revision.

a. Export Commodity Classification Number (ECCN) 9E515: *''Technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing of ''spacecraft'' and related commodities, as follows (see List of Items Controlled).*

The proposed controls on "technology" in ECCN 9E515 are unclear and potentially redundant. In particular, there is little practical distinction between "a. *"Technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul or refurbishing of commodities controlled by ECCN 9A515, ''equipment'' controlled by 9B515, or ''software'' controlled by 9D515."* and *"b. "'Technology'' (other than ''build-to-print technology'') ''required'' for the ''development,'' ''production,'' design verification, manufacturability, or quality control for items in ECCN 9A515, except items in ECCN 9A515.b.* This lack of clarity will undermine the usefulness of license exception STA and complicate industry compliance efforts.

In particular, the use of "'production'" in paragraph a. and "manufacturability" in paragraph b. is a source of confusion. We concur that it is important to control the manufacturing "know how" more stringently than other "required" "technology." However, without a definition for "manufacturability," it is difficult to distinguish between "development" and "production," which are defined terms on the CCL.

Moreover, "operation" should be deleted from paragraph a as it constitutes an additional control on data that is currently not controlled on the ITAR. Expanding technology controls on "operation" data provides no value in protecting U.S. national security interests. This approach would also require deleting "operation" from the ECCN 9E515 heading.

"Design verification" and "quality control" do not seem to warrant control in paragraph b. We do not believe these activities, although undefined in the EAR, are significantly tied to the more sensitive "manufacturability" technology intended to be the focus of paragraph b. Similarly, "'development'" and "'production'" technology are identified in both paragraphs and are better suited for paragraph a. In considering a definition for manufacturability, we recommend that the Department make clear that the existing definition for "development" not control those stages which are related to manufacturability.

These changes would help to clarify the intent of ECCN 9E515 and ensure that exporters are able to distinguish between the two levels of control on spacecraft "technology."

b. Entry Into Force

Lockheed Martin is eager to have changes to U.S. export controls on commercial satellites and related items enter into force as quickly as possible. We appreciate requests for the U.S. Government to shorten the transition period for Category XV controls, which is expected to be an additional six months after the publication of the final rules. We should ensure that the proposed export controls provide the necessary relief and flexibility that enable the U.S. commercial space industry to compete and win in the global market place, while still appropriately protecting sensitive technologies that provide the U.S. warfighter with a military advantage. A shorter transition time may help accomplish this goal, but it is important that the new licensing requirements and procedures are implemented in such a way that U.S. exporters and the licensing agencies alike are able to implement and comply with them effectively.

In addition, we expect that the full effect of the controls outlined in this rule may take some time to be realized. It is difficult to predict how the jurisdictional changes will enable commercial space trade without some licensing history. Category XV more than other USML categories may benefit from a follow-up review approximately one-year after entry into force to determine whether the delineation between commercial and military items has had the intended effect of improving national security while expanding international trade in this area.

Prior to publication in final form, we recommend that the Departments of State and Commerce reassess the need for a six-month transition period for the EIF of the final changes to Category XV, taking into account how the transition for other categories of control is proceeding and the potential effect on U.S. licensing agencies to implement the new procedures sooner than planned. We also recommend that the Department of Commerce lead an effort approximately one-year after EIF to review whether the final rules are effectively facilitating international commercial space trade.

III. CONCLUSION

Thank you for the opportunity to provide comments on the proposed rules. Lockheed Martin remains a strong supporter of comprehensive and balanced export control reform, and we look forward to continuing to work with the Department of Commerce, and other U.S. agencies, to expand and improve the U.S. commercial space industry in accordance with our U.S. economic, national security, and foreign policies.

Sincerely,

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