September 9, 2013

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

Ms. Sarah J. Heidema
Acting Director
Office of Defense Trade Controls Policy
U.S. Department of State
2401 E Street N.W.
Washington, D.C. 20037

Re: Revisions to the Export Administration Regulations (EAR): Control of Military Electronic Equipment and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML) (*Federal Register* Notice of July 25, 2013; RIN 0694-AF64) and Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Category XI (*Federal Register* Notice of July 25, 2013; RIN 1400-AD25)

Dear Mr. Mooney and Ms. Heidema:

The Semiconductor Industry Association ("SIA") is the premier trade association representing the U.S. semiconductor industry. Founded in 1977 by five microelectronics pioneers, SIA unites over 60 companies that account for nearly 90 percent of the semiconductor production of the United States. The semiconductor industry accounts for a sizeable portion of U.S. exports.

SIA is pleased to submit the following public comments in response to the request for public comments issued by the Commerce Department's Bureau of Industry and Security ("BIS") on proposed revisions to the Export Administration Regulations ("EAR") pertaining to military electronic equipment and related items the President determines no longer warrant control under United States Munitions List ("USML")

("Proposed EAR Revisions"),[1] and revisions to USML Category XI ("Proposed ITAR Revisions").[2] SIA is mindful of the fact that as the President's Export Control Reform Initiative is implemented, new Export Control Classification Numbers (ECCN's) may be contemplated and created that would potentially cover integrated circuits. SIA urges BIS to ensure that new ECCN's are constructed in a manner that would avoid overlapping coverage and create confusion for exporters, and we would like to work with BIS to ensure that result.

USML Category XI (c) (1)

As SIA noted in its September 13, 2011 comments on the initial proposed "specially designed" definition[3] and reiterated by SIA in its August 3, 2012 comments on the revised proposed "specially designed" definition,[4] the term "Application Specific Integrated Circuit" (or "ASIC") is a well understood and clearly defined term within the semiconductor industry. The definition of ASIC generated by the JEDEC Solid State Technology Association -- "an integrated circuit developed and produced for a specific application or function and for a single customer" – is longstanding and generally accepted and captures the essence of an ASIC as being a custom integrated circuit designed particularly to conform to a single customer's unique requirements.

SIA urges that, for purposes of the U.S. export control regime, the U.S. Government adopt a definition of ASIC that matches the JEDEC definition of that term. Specifically, the State Department and Commerce Department should clarify that the term "ASIC" employed in the proposed revised version of USML Category XI (c)(1) is defined to be: "an integrated circuit developed and produced for a specific application or function and for a single customer." Doing so will utilize existing industry terminology and, accordingly, will provide exporters with a clear basis upon which to classify an integrated circuit.

USML Category XI (a) (7)

The SIA would also like to suggest that USML Category XI (a)(7) in regard to "Developmental electronic equipment or systems that are funded by the Department of Defense (DOD) via contract of other funding authorization" is overly broad and may

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[1] Revisions to the Export Administration Regulations (EAR): Control of Military Electronic Equipment and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML), 78 Fed. Reg. 45,026 (Jul. 25, 2013) ("Proposed EAR Revisions").

[2] Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Category XI , 78 Fed. Reg. 45,018 (Jul. 25, 2013) ("Proposed ITAR Revisions").

[3] Comments by Semiconductor Industry Association to U.S. Department of Commerce Re: Proposed Amendments to the Export Administration Regulations, RIN 0694-AF17 (Sep. 13, 2011) at 5

[4] Comments by Semiconductor Industry Association to U.S. Department of Commerce Re: "Specially Designed" Definition , RIN 0694-AF66 (Aug. 3, 2012) at 5; Comments by Semiconductor Industry Association to U.S. Department of State Re: "Specially Designed" Definition, RIN 1400-AD22 (Aug. 3, 2012) at 5.

result in confusion and delays in development of new technologies that were intended for both civil and military applications.

Notwithstanding the addition of Notes 1-3, we are concerned that some DOD funded systems may be incorrectly labeled as ITAR simply because they are funded by DOD. Today DARPA funds a variety of types of activity, both purely military and a combination of military and civilian. We believe some additional clarity should be added to prevent the accidental classification of a project as ITAR in the event a contracting officer does not elect to specify it as civil in the contract. This could be done by mistake or omission. The SIA would suggest some additional language be added to specify that the contracting officer is not making a final decision as to whether something is ITAR-controlled. Further we also suggest an adjustment to the definition in XI (a) (7) to read: "Developmental electronic devices, systems or equipment for a military application funded by the Department of Defense."

SIA appreciates the opportunity to comment on the Proposed Revisions and looks forward to continuing its cooperation with the U.S. Government on this subject. Please feel free to contact the undersigned or SIA's counsel, Clark McFadden of Orrick, Herrington & Sutcliffe LLP, if you have questions regarding these comments.

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Cynthia Johnson
Co-Chair, SIA Trade Compliance Committee

David Rose
Co-Chair, SIA Trade Compliance Committee