NORTHROP GRUMMAN

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Department of Commerce
Bureau of Industry and Security
Regulatory Policy Division
Room 2099 B
14th Street and Pennsylvania Avenue, NW
Washington, D.C. 20230
ATTN: Gene Christiansen, Office of National Security and Information Technology Controls

Re: Notice of Proposed Rulemaking, RIN 0694-AF36, 76 Fed. Reg. 68675 (Nov. 7, 2011); Amendments to 15 C.F.R. Parts 738, 740, 742, 770, 772, and 774[1]

Dear Mr. Christiansen:

Northrop Grumman Corporation (Northrop) wishes to thank the Department for the opportunity to comment on the subject proposed rule. Northrop supports the approach of the Administration to transfer from the U.S. Munitions List (USML) to the Commerce Control List (CCL) items that may be used in military applications and may have originally been designed for a military application, but that the President determines no longer warrant control on the USML, no longer have military uses, or are now used in military and commercial applications.

Our comments focus on the following topics:

1) Concern that some items previously determined to be EAR99 would revert to a higher level of control;
2) Clarify controls applicable to commercial unmanned aerial vehicles;
3) Clarify and harmonize terms and definitions between the EAR and ITAR;
4) Recommend a common standard for re-exports of U.S. parts incorporated into foreign products (known as de minimis);
5) Infrastructure and resource issues to implement proposed change.

[1] Herinafter "RIN 0694-AF36".

Imposition of Higher Level of Control than Current Regulations

Our principal comment on the proposed rule is a concern items currently classified as EAR99 as a result of a State Department commodity jurisdiction ("CJ") determination could become controlled by the proposed Export Control Classification Number ("ECCN") 9A610.y.99,[2] because the item is not elsewhere specified on the CCL. Exporters would be required to obtain EAR export licenses that are not currently required for EAR99 items. We also recommend that the Department explain whether previously issued CCATS determinations that determined an item was EAR99 will remain valid.

Clarify Controls applicable to Commercial Unmanned Aerial Vehicles

We believe that any unmanned aerial vehicle ("UAV") specially designed for a military application which is not in MTCR Category 1, and does not include any specially designed capability covered by the USML, should be transferred to the proposed Commerce Munitions List ("CML") ECCN 9A610.a, or existing ECCN 9A012. RIN 0694-AF36 did not specifically address whether ECCN 9A012 would be eliminated in the same manner as 9A018. We recommend including specific language in the final rule, including those unmanned aerial vehicles covered on the CCL in Category 9A012 or added to the proposed 9A610.

Clarify and Harmonize Definitions

Northrop previously submitted[3] comments to the Department of Commerce regarding the definition of "specially designed" in response to the proposed rule of July 15, 2011.[4] We recommend that State and Commerce Departments coordinate using the same definition for the term "specially designed" consistent with its use in the Wassenaar Arrangement. We further recommend the Departments of Commerce and State coordinate consistent definitions in the EAR and ITAR (*e.g.* end-items, components, accessories, attachments, parts, firmware, software, systems, and build-to-print), as the same terms are currently defined differently in the EAR and ITAR, or exist in one regulation but not the other. Specifically, the definition of the term "end item" should state whether items designed to be integrated into a platform requiring only a power source to place it in an operating state are also "end items" or whether it is only the platform that is an "end item".

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[2] RIN 0694-AF36, ECCN 9A610 Military aircraft and related commodities, -y.99. "Commodities that would otherwise be controlled elsewhere in this entry but that (i) have been determined to be subject to the EAR in a commodity jurisdiction determination issued by the U.S. Department of State and (ii) are not otherwise identified elsewhere on the CCL."

[3] September 13, 2011 RIN 0694-AF17

[4] 75 FR 41958 (July 15, 2011), Proposed Revisions to the Export Administration Regulations: Control of Items the President Determines No Longer Warrant Control Under the United States Munitions List .

Adopt A Common Standard for Re-Exports of U.S. Parts in Foreign Products

The proposed de minimis level of 10% for the "600 series" parts and components incorporated into foreign end items increases the complexity and opportunity for error in the calculations by the foreign manufacturer. Further complexity in the de minimis standards may not address the "design out" of U.S. origin export controlled items by foreign manufacturers. We recommended in our comment letter of September 13, 2011 to adopt a standard calculation of 25% for all destinations except proscribed countries identified in the International Traffic in Arms Regulations, §126.1.

We understand from various public comments that the Department is seriously considering this suggestion, and want to confirm our support for clear and consistent de minimis calculations within the regulations.

Infrastructure and Resource Issues

We want to reiterate the following comments submitted in our September 13, 2011 letter regarding the process for transition of items from the USML to the CCL, and administrative burden.

1. Establish a "grandfather" process and time period to retain validity of existing Dept. of State authorizations for items moving to the Commerce Control List "600 Series".
2. Assure the Department has sufficient resources to conduct training and outreach, as well as process the increased workload that will transition from the State Department.

Northrop Grumman will be pleased to discuss these recommendations further. Please contact me, at (703) 280-4056, or beth.mersch@ngc.com to arrange for any discussions.

Best Regards,

Mary Elizabeth Mersch

Mary Elizabeth (Beth) Mersch
Director, Export Operations